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(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE


Resolution of the European Economic and Social Committee on ‘A New Narrative for Europe — The EESC resolution on the Conference on the Future of Europe’

(2021/C 286/01)

Rapporteurs: Stefano MALLIA (Group I)
Oliver RÖPKE (Group II)
Séamus BOLAND (Group III)

At its plenary session of 27 and 28 April 2021 (meeting of 27 April), the European Economic and Social Committee adopted the following resolution by 226 votes to 1 with 5 abstentions.

1.1. The Conference on the Future of Europe (‘the Conference’) gives a unique opportunity for Europe to reconnect and engage with European citizens, including through civil society actors, to provide them with a meaningful say on their common future. It is now time to bring to fruition the promise of Article 11 of the Treaty on the EU to give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action and to maintain open, transparent and regular dialogue with representative associations and civil society.

1.2. The European Economic and Social Committee (EESC) believes that the success of the Conference will also depend on the ability to outline a new narrative for Europe, grounded in the realities of everyday life, for which European citizens can claim ownership. Such a narrative shall be more than a list of achievements; it shall, instead, be a concrete rational and emotional link between the EU and its citizens. Strategic themes should be put in a common perspective to avoid a looming Europe à la carte. The objective is to rediscover and renew a much needed sense of community based on shared values, generating new European momentum to face current and future challenges.

1.3. The EESC has deep rooted links with all walks of life (employers, trade unions, civil society at large) in all the Member States; as such, it is best placed to effectively involve the organised civil society as it has the respective networks to do so. This is its undisputed know-how and raison d’être. EESC’s permanent participation throughout the whole Conference process including in the Executive Board is key.

1.4. The EESC must be fully enshrined in the governance of the Conference; it is determined to provide strong and clear proposals, based on its narrative and vision for the EU of the next decades. The Committee reiterates its firm belief that the Conference must provide proposals and solutions that will make a real tangible difference to the citizens of the EU. Therefore, it is vital that the Conference must make concrete and measurable progress and not just lead to non-binding
discussions with citizens that lead nowhere. As such, the proposal of Commission Vice President Šefčovič to include the conclusions of Conference in the work programme of the Commission in 2022 points to the right direction. This is a crucial point which underpins the credibility and ambition of this whole political process.

1.5. The governance of the Conference should define the scope and purpose of citizen and civil society engagement, which should be stated at the outset. Knowing the goal of participation instruments can also help to align the objectives with the available means, both in terms of process design and budget. The governance will certainly have to resort to different formats and methods of involvement, depending on the phase and level at any given point and find ways to reach those Europeans that are not self-motivated to engage. Citizen and civil society’s contribution should be taken up by politicians and institutions or reflected in decisions, otherwise their trust in these exercises is likely to fade. Too high expectations must be avoided. A feedback mechanism will ensure that the ideas expressed during the Conference events result in concrete recommendations for EU action.

1.6. The short timeframe of the Conference imposes limitations on all participants. It should thus be understood as a starting point of a continuous process for greater engagement with Europe’s citizens, building on this initial period. This opportunity should be used to change paradigm and the level of ambition across policy fields, including economic, social and environmental policy.

1.7. The deliberations of the Conference must be followed-up and approached with open-mindedness by all actors, with no foregone conclusions on next steps, with all options on the table. In this respect, some EU initiatives and instruments were launched in the last years, which now need to be implemented. Regular monitoring of the implementation should be promoted as well as an update on the progress made at EU level on the measures adopted and instruments available.

2. A New Narrative for Europe — Europe: a great place to be and prosper

2.1. Against this background, the EESC proposes a new narrative for Europe that ties Europe’s distant and recent past to the present, and provides a vision for the future built on cooperation across borders, strengthening the links between the people of Europe, and rooted in values of solidarity, social justice, inter-generational cooperation, gender equality, sustainable prosperity, and just green and digital transitions. It is imperative to leverage public support for these values, in order to re-think our growth and governance models towards sustainability, build a more equal society and place civil society organisations at the centre of this reconstruction and recovery.

The Europe our citizens need is one that:

— Recognises that civil society are guardians of the common good and integral to identifying solutions to Europe’s common challenges;

— Focuses on a fair and sustainable recovery from the COVID-19 crises that paves the way to a more inclusive society and builds long-term competitiveness, taking full account of the intertwined social, economic, democratic, demographic and climate crises in EU Member States, the necessity for green and digital transitions, as well as the longer term structural changes being triggered by the pandemic. Europe’s economy must be fully supported to recover the lost ground, taking into account the need for upward convergence, greater cohesion, social protection, reinforced investments in public services, the Sustainable Development Goals (SDGs) and poverty reduction;

— Supports economic and social recovery, entrepreneurship, just transition, quality job creation, education and skills acquisition, innovation, infrastructural and social investment, decarbonisation, digitalisation, completion of single market, and economic and monetary integration;

— Protects all of its citizens, including the most marginalised, safeguarding their health and safety and well-being, the environment and biodiversity;

— Respects and promotes diversity, gender equality, fundamental rights, democracy, social dialogue, and inclusive governance; and
— Promotes peace, security and progress in the world through multilateralism, promotion of democracy and rule of law, human rights, social dialogue, the Sustainable Development Goals (SDGs), diplomacy and open, fair and sustainable trade.

2.2. The EESC is unanimous in recognising that the double transition, green and digital, are of paramount importance to strengthen Europe’s sustainable competitiveness, solidarity and resilience to deal with future crises. The pandemic of COVID-19 has been the harshest crisis that the EU has faced since its creation. The pandemic has exacerbated the need for the EU to be able to provide for strong and consistent answers to improve the political, health, economic and social dimensions of the EU. This Conference provides the EU with a unique opportunity to achieve this result.

The need for a common European approach has been highlighted by the impact of COVID-19 on our citizens, societies and economies. The pandemic has shown that there is a strong rationale to act together, but it has also exposed weaknesses in how Europe deals with such fundamental challenges. In an age of ‘permacrisis’, the EU will need to strengthen its capacity to deal with crisis to deliver the outcomes European citizens want and deserve.

2.3. This crisis has also made clear that the EU should dedicate bigger efforts to ensuring that businesses, workers, as well as people facing poverty and social exclusion, are duly protected from the impact of recent and upcoming challenges. COVID-19 also made clear that sustainable competitiveness has to be supported and that investments in quality health, care, education and social services have to be increased across the EU. It will be crucial to further enhance health coordination at EU level, better tackle cross-border health threats and strengthen EU health systems.

2.4. The EU can count on key strengths, such as its internal market which is one of the biggest markets in the world, a set of fundamental non-negotiable values which are an integral part of European society and democracy, and on solidarity as demonstrated by an ambitious Resilience and Recovery Facility, which requires the efficient implementation of national recovery plans. The ultimate goal of the EU must be to strengthen our social market economic model, where a sustainable, competitive economy and well developed social policies go hand in hand. Following from this, achieving the European Green Deal — that the EESC has welcomed since its very beginning — is the way forward. The Green Deal is the new European growth strategy, with prosperity, sustainability and social justice at its heart. Delivering a just transition to a climate neutral way of life, fostering quality jobs and promoting sustainable entrepreneurship and innovation, including the circular economy and social economy, will be key for a prospering Europe.

2.5. The EU is however facing strong challenges: the pandemic will create more and not less inequalities both among and inside the Member States. This is why the two sides of the coin must be pursued: the sustainable competitiveness of the European economy and businesses of all sizes, in particular SMEs, must be further strengthened. At the same time Europe should embrace a more ambitious and concrete social dimension that leaves no one behind.

2.6. To protect its values and to deliver on its priorities, the EU must also play a positive role in the international economic sphere. In a world characterised by strong competition and friction, not only at the economic but also at the political level, the EU must become a global actor that can defend its interests and values more effectively. Achieving a degree of open strategic autonomy, to maintain the capacity of the EU to act in crucial economic areas, must be balanced by a willingness to cooperate to advance solutions to common challenges such as climate change and to strengthen the rules-based multilateral system.

2.7. The pandemic has highlighted the importance of a strong and resilient European industrial basis. Europe must have an ambitious industrial policy that drives the twin transitions — digitalisation and sustainability — while enhancing Europe’s global competitiveness. A new industrial policy, using a range of different policies (including trade, skills, investment, research and energy) needs to constantly anticipate the key future economic sectors and drivers, creating the framework conditions, including the necessary skills profiles, to enable European industry to remain at the forefront of global technology and innovation, delivering high quality jobs and sustainable growth for Europe. Achieving competitiveness, sustainability and social justice at the same time will safeguard Europe’s socioeconomic model for the future.

(*) Art. 2 of TEU.
2.8. It is critical that the EU uses this opportunity to modernize and transform its industrial sectors and their supply chains, so that they remain competitive in a world of lower emissions. Addressing the challenges associated with long-term transformations requires anticipation of change and active transition management on the part of policy-makers, the social partners, civil society organisations and key stakeholders in these countries and regions. Social dialogue, information, consultation and participation of workers and their representative organisations play a key role in managing transitions in a forward-looking way. This will absolutely be crucial for Europe, since only by placing both companies and workers at the very heart of the recovery and future policies, Europe can succeed. Competitiveness and inclusiveness have to go hand in hand: the best performing Member States, from an economic point of view, are those which have the highest social standards, not vice versa.

3. Role of the EESC

3.1. Strengthening the EESC’s own role calls for proving its relevance and added value as a consultative body, based on its unique role of bridging the gap (1) between policymakers and civil society, (2) between different actors of civil society, (3) and between actors at both national and European levels. In particular, to create a transnational debate that connects the European debates at the Member State level with each other.

3.2. The EESC’s position should be the result of a true discussion, starting from the input of civil society actors and developed from the bottom up. This approach is the only one that ensures that all points of view are considered and that brings clear and efficient results.

3.3. To establish cooperation with the Committee of the Regions (CoR) and organise Going Local missions together in full respect of the different but complementary remits of the two institutions.

3.4. The EESC is invited to act, via its members in the Conference plenary and via its observers in the Executive Board, as an institutional intermediary between the Conference and national organisations representing civil society.

3.5. The EESC has an ad-hoc group. The ad-hoc group decided on roadmap with the following aims:

— Improving the ways of engaging and connecting with civil society actors, particularly interacting and activating EESC Members’ constituencies on the ground;

— Upgrading and strengthening the EESC’s own role and influence;

— Providing structured civil society input to EU policymaking by making relevant proposals to the Council, the European Parliament, and the European Commission on how to improve the functioning of the EU and the work of the EESC into the legislative process.

3.6. Report back on the debates and dialogues in the Members States and within the Conference to the EESC plenary with the participation of Members of the European Parliament (MEPs), CoR members, Commissioners and Council ministers.

4. Conclusions

The future we want: civil society in the driving seat

4.1. The EESC believes in the need for a strong, shared narrative for the European Union.

In that sense, Europe has to be considered as: 1) guardian of shared fundamental values, such as freedom, democracy, human rights and the rule of law, 2) global promoter of sustainability, open and fair trade and multilateralism, 3) haven for a unique economic and social model based on fair competition and solidarity in an area without internal borders and 4) driver of a sustainable prosperity; with a strong European civil society at its heart.

4.2. The Conference on the Future of Europe should be the vehicle through which we can bring about long-lasting change in the EU, including an increased and more meaningful involvement of citizens and of organised civil society in the European public sphere. As a first step in this process, civil society must work in partnership, closely collaborating, networking, exchanging good practices and seeking consensus.
4.3. Civil society organisations are crucial in identifying solutions to today's challenges. The EESC asks that the EU and national authorities recognise the crucial role of organised civil society, in building trust, shaping public opinions and as positive agents of change. It is also imperative that the EU supports the pivotal role played by civil society organisations in promoting and defending European values, democracy, fundamental rights and the rule of law, against increasing illiberalism, populism and 'shrinking civic space'.

4.4. Key to the EU's renewal and socioeconomic reconstruction, will be ensuring that all parts of society are effectively involved in the co-design, co-participation, co-implementation and co-assessment of EU policies, notably the National Recovery and Resilience Plans as well as future National Reform Programmes, using existing consultation structures, such as the European Semester process, and explicitly recognising civil society as critical implementing partners and beneficiaries.

4.5. Imagining and building these resilient, equal and sustainable societies will require bottom-up initiatives, which embrace new definitions of well-being and development beyond Gross Domestic Product (GDP), whilst respecting the opinions and rights of citizens. Moreover, it is imperative that limitations to rights introduced during the pandemic are not continued post COVID-19.

4.6. Finally, for the EESC it is also crucial to constantly assess the suggested measures and policy actions. The EESC will offer a solid contribution to this process, through the experience and knowhow the Committee has of engaging in dialogue with citizens across the whole of society in all the EU Member States.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Resolution of the European Economic and Social Committee on ‘European Civil Society Working in Partnership for our Sustainable Future — EESC contribution to the Porto Social Summit’

(2021/C 286/02)

Rapporteurs: Stefano MALLIA (Group I)
Oliver RÖPKE (Group II)
Séamus BOLAND (Group III)

At its plenary session of 27 and 28 April 2021 (meeting of 28 April), the European Economic and Social Committee adopted the following resolution by 225 votes to one with six abstentions.

The Social Summit in Porto on 7 May 2021 provides a unique opportunity for the EU to place citizens squarely at the centre of the European project. It is an opportunity to demonstrate that the EU and Member States act together with its citizens and for their well-being, leaving nobody behind. It is the culmination of European ambitions for sustainable, innovative, competitive and cohesive societies, which will take the EU to 2030 and beyond, allowing the Union to both meet and take advantage of the challenges of the green and digital transitions. The Summit should also support our economy and society to achieve sustainability, giving equal weight to the economic, social and environmental dimensions.

The COVID-19 pandemic has rendered even more urgent an approach which puts equal focus on the social and economic aspects of our societies and economies. People have experienced COVID-19 as a human-centred pandemic and as Europe slowly moves towards socioeconomic reconstruction and implements the European Pillar of Social Rights (EPSR), people and communities must remain staunchly at the centre. In this respect, the Action Plan on the EPSR could not be more timely.

A Porto declaration should engage all institutional, economic and social actors for the implementation of the Action Plan building on civil and social dialogue. It is a milestone moment for Europe to take the essential next steps towards a viable and sustainable union;

The European Economic and Social Committee (EESC) urges Member States and the European Institutions to take action on the following:

1. The EPSR Action Plan must become an effective tool to allow all actors to work in partnership and build more equal, sustainable, inclusive and resilient European societies. All dimensions of civil society as represented within the EESC have a fundamental contribution to rendering this process successful. All citizens, including disabled persons, ethnic and minority groups, the most vulnerable and marginalised, must be able to participate in, identify with and find hope in the vision and future implementation of the EPSR, through the active engagement of European civil society. Particular recognition and support should be given to the social economy, which has a crucial role in addressing unmet social needs, alleviating poverty and reducing inequalities;

2. More equal, sustainable, inclusive and resilient European societies will only be possible through compelling civil society engagement and effective dialogue with social partners and civil society. Measuring and reporting on the impact of civil society, raising awareness of their positive contribution and creating an enabling legal environment and policy mix are of paramount importance;

3. Imagining and creating resilient, inclusive, equal and sustainable societies will require bottom-up initiatives, which embrace new definitions of well-being and development beyond GDP and invest in social innovation, whilst respecting the opinions and rights of citizens. Moreover, it is imperative that limitations to rights introduced during the pandemic are not continued post COVID-19;

4. Europe must continue to be united and move on in solidarity, supported by a culture of civil and social dialogue, as it is happening during the pandemic. The EPSR supports a social market economy, scaling up and adapting its social model to the changes of the future. To build social resilience and sustainability the EPSR Action Plan has to ensure a widespread well-being and inclusive labour market where discriminations are banned, and jobs are stable and well remunerated.
5. In the aftermath of the pandemic, through social dialogue, institutions and social partners have to create solutions that increase the social resilience of our economies with a new and open mindset for change while aiming at minimum standards of protection and equal opportunities, with a particular focus on adequacy of wages, gender-based discriminations, support to young workers and protection of precarious workers and migrants.

6. One of the key economic and social challenge in Europe is to boost economic growth, job creation and employment participation (including older and younger people, women, people further away from labour market, inactive persons) and reduce unemployment, particularly of young people, as well as reinforcing women's position in the labour market. Ensuring the competitive base for investments is an important element for all this to happen.

7. Competitiveness and higher productivity based on skills and knowledge represent a sound recipe for maintaining the well-being of European societies. Economic growth and a well-functioning internal market are an important element for strengthening the social dimension of the EU. We need to reinforce the strengths of our European social market economy system while removing the weaknesses and thus adapt it to face the challenges ahead.

8. All major components of our economy and societies need to be prepared to harness the potential offered by digitalisation and transition to green economy. Prerequisite to this is willingness and ability to structural changes: be it labour markets, social security, education and training or taxation. This implies a truly assumed ownership of reforms by the Member States, coordinated and facilitated by EU level frameworks and actions such as the European Semester. This is key for encouraging companies to invest in Europe.

9. The combination of a growing ageing population and a shrinking workforce means that an increasing number of older persons will be economically dependent unless we succeed in enlarging the workforce through more inclusive labour markets, including activating groups that are currently excluded or underrepresented in the labour market. Action is needed to address challenges that social security and health care systems in Member States are facing. Demographic change will also mean that we need adaptable and flexible national education systems, labour markets and welfare systems. These challenges do not necessary represent problems but opportunities to be turned into positive outcomes.

10. The Action Plan should be based on concreteness and tangibility with actions that are measurable and accompanied by monitoring frameworks, jointly agreed among relevant stakeholders, encompassing the social, environmental, and economic criteria. The EESC welcomes the Headline Targets proposed by the European Commission and invites Member States to be ambitious in setting their own targets so that all Member States factually contribute to the achievement of the European targets.

11. As Europe moves from crisis response to recovery, social dialogue, information, consultation and participation of workers, via appropriate channels, play an important role in shaping economic transition and fostering workplace innovation, in particular with a view to the ongoing twin transitions and the changes in the world of work.

12. The medium to longer term impact of the COVID-19 crisis on European health systems is insufficiently taken into account in the EPSR. The pandemic has clearly illustrated that health can have a direct impact on economic and social stability, even in the EU. In implementing the EPSR, increased and sustainable investments must be made by Member States in upgrading public health services and infrastructure, as well as improving coordination on public health within and among Member States.

13. There are high expectations for a strong commitment at the Summit from all stakeholders to maintain and develop the European social model based on a balanced mix of rights and responsibilities. We appeal to the Member States and the European Institutions to show ambition and determination.

Brussels, 28 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
1. Conclusions and recommendations

1.1. The liberal professions are already very successful in using digital and artificial intelligence (AI) applications for the benefit of their clients, for example in engineering, and are at the forefront of their technological development. They must continue to be more closely enlisted in the development and validation process in future in order to ensure applications are usable in practice and effective.

1.2. Digital applications should not be viewed as competition or as a substitute for professional services. Instead, they are tools that are already improving and expanding the provision of professional services.

1.3. For the sake of their clients and patients, the liberal professions must be able to identify and gauge the dangers arising from the use of digital technologies. This is because of the special aspect of trust that distinguishes the relationship and which will also remain a key element in the case of digital distribution channels.

1.4. When it comes to digital applications, patients and clients must be able to have trust in professional services being delivered under the provider's own responsibility on a professional basis and independently of outside interests. Appropriate professional regulations adapted to digital developments are an important prerequisite for this.

1.5. Professions must consistently ensure data protection and defend it against third parties. The EU needs secure digital infrastructure in order to avert data misuse.
1.6. The liberal professions need to update the content of training in order to ensure their own IT and digital skills and those of their employees are of the highest possible quality standard. The EU is called upon to support these processes with appropriate funding programmes.

1.7. The liberal professions need to adapt their self-government to digital developments and actively help shape the process. This may require an extension of the professional rules.

1.8. The creation of new professions made possible by digitalisation should be encouraged, on the basis of the criteria and principles set out in the Rome Manifesto.

2. COVID-19 and liberal professions

2.1. The pandemic has triggered a massive digitalisation process in the liberal professions as elsewhere. The increased need for professional services and the restrictions provoked by the pandemic have necessitated a sharp expansion in digital services. The crisis has highlighted how reliant our society is on the outstanding professional know-how of the critically important professions. As key partners for governments in crisis management and in ensuring the population’s basic needs, liberal professions must in future be even better integrated into social partner systems and their services guaranteed by adequate professional rules tailored to digital developments. The fact that many self-employed people and liberal professionals had no, or insufficient, access to state aid during the pandemic merits criticism.

2.2. The marked expansion of digitalisation in professional services will also potentially have a lasting impact on improved coverage in remote regions. It is important to ensure in the process that the urban-rural divide in fast broadband, which is currently far too deep, is reduced as soon as possible and that digitalised services are made equally accessible to people from all regions. The liberal professions have invested in digitalisation and data protection during the crisis to fulfil their role as public service providers in key positions in society. It is therefore important to explicitly include the liberal professions as a critically important group in all economic recovery measures.

3. Rome Manifesto — definition of liberal professions

3.1. The liberal professions play a crucial role in the EU’s economic and social development. They are part of the wide range of regulated professions that must have specific qualifications and comprise 22% of all workers in Europe. In 2013, more than a tenth of gross value added in the EU came from the liberal professions sector. The COVID-19 crisis has highlighted the vital dependence of our society on highly qualified services provided by the liberal professions. As resilient employers and businesses, they offer significant employment potential. They perform important public interest roles; the services they provide are closely connected to people’s basic needs, such as life, work, health, safety and property. It is important against this backdrop that democratic access to professional services is guaranteed — for example, in medicine, social security systems or in justice through legal aid. Recommendations for fee or cost ceilings serve as protection for those who use professional services and who, because of the information imbalance, are dependent on such measures.

3.2. The European Economic and Social Committee has looked at the liberal professions a number of times and in 2014 commissioned a comprehensive study entitled ‘The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society’ (1). It emerges from this work that there is as yet no universally binding understanding or definition of liberal professions at EU level.

3.3. In order to define the concept of liberal professions, the EESC therefore adopted the Rome Manifesto in December 2017. This was able to draw on preparatory work carried out by individual European federations of liberal professions, which had together attempted to frame a European definition in the form of a Charter for Liberal Professions.

3.4. According to the Rome Manifesto, liberal professions provide intellectual services based on a specific professional qualification or skill. These services are provided personally and rest on a relationship of trust. Members of the liberal professions carry out their activity autonomously and on a professionally independent basis. They are characterised by a professional ethos, have an obligation to the interests of their client, are required to act in the public interest and are subject to a system of professional organisation and oversight.

3.5. This definition is not exhaustive but open to new technological developments and new professions. The Rome Manifesto demonstrates that these characteristics are indicative of liberal professions, but need not necessarily be cumulatively present.

4. Challenges of digitalisation

4.1. Global digitalisation has triggered a process of transformation of society as a whole, the consequences of which cannot be foreseen. The COVID-19 pandemic will further accelerate this trend.

4.2. The following examples show that digital applications and distribution channels and the use of artificial intelligence are already an indispensable part of many professional services and have the potential to further improve these in future. What remains to be ascertained are the impact of the lack of personal contact on the special relationship of trust between professionals and their clients or patients and how far the ‘human factor’ can be replaced by artificial intelligence.

4.2.1. The field of legal advice is seeing a growing spread of blockchain technologies and legal tech. Electronic lawyer mailboxes and e-government applications will change forever the way people interact with courts and authorities. The liberal professions are already important partners in the implementation of eGovernment projects and contribute appreciably to administrative simplification in this area.

4.2.2. In the planning area, Building Information Modelling (BIM), a method for networked design, construction and operation of buildings, is becoming increasingly important and many infrastructure safety assessments are carried out with the help of artificial intelligence.

4.2.3. In the health sector, AI applications are leading to significant changes in medical diagnostics. This is compounded by the advance of virtual consultations, e-prescriptions and the increasing use of electronic medical records.

4.3. Digitalisation is changing communication and information channels. On the one hand, it opens up the possibility of obtaining information before and while using professional services, thus reducing the information imbalance that exists. On the other hand, there is a risk that a glut of unfiltered and uncurated information or targeted fake news may make consumers uncertain and lead them to serious miscalculations, and may even reinforce information imbalances.

4.4. Digitalisation of professional services and AI-based speech-recognition and translation systems will lead to a reduction in attachments to place and language. This is true above all of advisory and planning services, though it also applies to social and health services. This must not undermine the country-of-reception principle laid down in the services directive.

4.5. The quality of data in AI applications is particularly important in the area of professional services. If such applications are to be successfully used in practice in sensitive areas, the involvement of the liberal professions in technical development and, in particular, in the quality assurance of data is essential.

4.6. One important aspect here is the anonymisation or pseudonymisation of data as a basis for its safe use for the benefit of clients. At the same time, technological advances increase the risk of cybercrime, which also threatens the services offered by the liberal professions.
4.7. Digitalisation will facilitate the market entry of new commercial operators catering to the business models of the liberal professions. The European Union and the EU Member States are called upon to support this process by regulating where necessary — for example, the relationship between platform operators and the liberal professions and access to such platforms. This should involve national supervisory authorities or professional chambers. In the field of pharmaceutical services, recent years have seen the emergence of large online cross-border pharmacies. New entrant companies that already have digital expertise are likely to benefit from this.

5. Key elements of liberal professions in the digital transformation

5.1. There is a particular relationship of trust between the liberal professions and their clients or patients that is an essential feature of their services. Digitalisation is putting this relationship of trust to the test. This comes, for example, with the fact that contact no longer takes place in person, but increasingly via technology, such as video links or electronic message services. Nevertheless, personal counselling and care grounded in trust will remain the core element of professional services provision, including in digital form.

5.2. In the long term, however, the question is whether AI applications can meet the same requirements as human counselling services. In theory, it is conceivable that the relationship of trust between humans could turn into a relationship of trust between humans and machines. AI applications still have a long way to go on this at present. The final decision must rest with people (the ‘human in command’ principle). The programming underpinning AI must be human-centred, transparent, focused primarily on the interests of service recipients and based on the same standards of liability. Transparency of the underlying algorithms is also essential for success and trust in AI services. They must not lead to distortions or to the proliferation of prejudices.

5.3. An important basis for this relationship of trust is professional independence and ownership. It is an indispensable feature of professional services that patients and clients can put trust in these being delivered on a professional basis, independently of external interests and with the provider taking personal responsibility. Trust in independent technical expertise will become increasingly important particularly in the digital field, where there is less transparency regarding the influence of various interests.

5.4. Data security and data protection are core elements in the provision of professional services in the digital age. The liberal professions have a key role to play here in guaranteeing their clients or patients safe use of digital applications and informing them of dangers. This strengthens the relationship of trust with the recipient of the service and goes hand in hand with the maintenance of professional confidentiality.

5.5. At the same time, it should be noted that the liberal professions are not able to detect all cases of misuse of data, a fact crucial in terms of possible liability issues. This is especially the case when data misuse occurs through external access to available digital infrastructure outside the EU. The European Union should therefore promote the development and expansion of secure digital infrastructure to keep up with competitors from other regions of the world.

6. Digitalisation and training

6.1. Digitalisation will change the requirements for the education and initial and further training of the liberal professions. A commitment is needed to lifelong learning that not only covers the field itself but also involves the acquisition of rapidly changing digital skills in other fields.

6.2. Professionals need to be equipped with the relevant digital skills in their initial training and in their professional life thereafter to make sure they have something to build on in future. The European Union is called upon to support these processes with appropriate funding programmes.

6.3. The acquisition and further development of digital skills also applies to the staff of professionals for whose training they are responsible.
7. Digitalisation and law governing professions

7.1. The stringent quality and safety requirements for the provision of professional services are regulated by law in many countries. They must be guaranteed whether these services are provided digitally or not. National professional law has been a bone of contention in the EU for many years. While the European Commission hopes that the reduction of national professional regulations will boost economic growth and competition, there is no mention of the consequential costs in the area of professional services of mistakes due to a lack of quality assurance in deregulated markets. As a result, many Member States consider their rules to be necessary and appropriate to ensure quality, especially when it comes to critically important professional services.

7.2. Because new digital forms of professional service provision will increasingly fall outside existing legal provisions, existing law governing professions will be adapted. In order to bring about the greater flexibility needed, rules rendered unnecessary by digitalisation should be revised. On the other hand, it will become more necessary to enshrine in law certain principles regarding access to and exercise of liberal professions in order to avoid digitalisation having adverse consequences for consumers and the professions.

7.3. In principle, the aim will be to find an optimal balance between binding rules and soft law, with professional self-regulation taking priority. Only when this fails to work is it for the legislator to regulate. Liberal professions that are not regulated should be encouraged to adopt codes of ethics.

8. Digitalisation and professional self-regulation

8.1. An essential feature of the liberal professions is some form or other of professional organisation. However, these vary from one Member State to another.

8.2. Self-regulation is mainly organised regionally, and sometimes locally. Digitalisation removes the traditional geographical and linguistic dependency of service provision. This raises the question of how professional scrutiny can be effectively ensured in the future. It is one self-regulation bodies should address at an early stage.

8.3. Digitalisation opens up new lines of work for professional organisations and associations of the liberal professions. They can help their members develop new digital business areas or work with new media.

8.4. Digitalisation will require an adaptation of the codes of conduct developed in the system of professional self-regulation. A professional ethics that ensures compliance with the prime basic elements of the liberal professions is an important prerequisite for avoiding adverse effects of digitalisation processes for consumers. Codes of conduct can here supplement legal provisions.

9. Emergence of new liberal profession profiles

9.1. Digitalisation can broaden existing professional profiles and strengthen interdisciplinary collaboration with other professions, and, if the criteria set out in the Rome Manifesto are followed, favour the emergence of new liberal professions in the spirit of an open and evolving system.

9.2. In addition, digitalisation will increase the continuing commercialisation of professional services and transform traditional professional profiles.

9.3. Self-government, professional ethics and minimum legal requirements will therefore play an important role in the future in order to secure, through innovative and flexible approaches, the public interest aspect in contrast to pure profit-making and thus the quality of professional services for consumers.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘The role of the social economy in the creation of jobs and in the implementation of the European Pillar of Social Rights’

(Exploratory opinion)

(2021/C 286/04)

Rapporteur: Giuseppe GUERINI
Co-rapporteur: Cinzia DEL RIO

Referral
Portuguese presidency of the Council, 26.10.2020

Legal basis
Article 304 of the Treaty on the Functioning of the European Union

Section responsible
Single Market, Production and Consumption

Adopted in section
31.3.2021

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27.4.2021

Plenary session No
560

Outcome of vote
(for/against/abstentions) 239/2/1

1. Conclusions and recommendations

1.1. The EESC is grateful to the Portuguese presidency for requesting this opinion, and considers it important to view the various bodies making up the social economy as strategic partners in implementing the European Pillar of Social Rights and in building a European Union that reaffirms that the main function of the economy is to serve people. To that end, it recommends that, in their national recovery and resilience plans for emerging from the pandemic crisis, Member State authorities provide for a broad involvement of social economy bodies.

1.2. The EESC considers it necessary to consolidate the operational criteria adopted by the EU institutions to promote proper recognition of social economy organisations and enterprises, in their various legal forms. These criteria require that social objectives of general interest take precedence, that democratic governance involving a range of stakeholders be adopted, and that even when ‘limited profitability’ is achieved, this is used to help pursue their statutory objectives.

1.3. In order to measure the social impact created by social economy organisations and enterprises, the EESC considers it necessary for the European Union to have a permanent statistical mapping system that will enable it to have suitable comparable and up-to-date data on the size and impact of the sector.

1.4. The EESC believes that, when the role of the social economy in creating and maintaining employment involves disadvantaged workers and disadvantaged areas, appropriate support policies are needed that give proper recognition to the general-interest role of these organisations, which, although taking the form of private legal entities, perform an essentially public function.

1.5. These support policies are needed at four levels:

— tax policies and taxation systems that recognise the general-interest role;

— policies to promote public and private investment that fosters the development of social-impact finance — including by harnessing public procurement and concessions;

— policies to support the stable employment and economic leadership of workers in social economy enterprises; and
— policies to support the skills level of staff and technological innovation in social economy organisations.

1.6. With regard to creating and maintaining jobs, the EESC believes that the formula known as worker buy-outs is a good practice not only for re-launching companies in crisis but also for transferring SMEs whose founders have no successors. To this end, it might be worth setting up a specific European investment fund.

1.7. The EESC calls for the growing interest of financial operators in social-impact investments to be supported and encouraged, including through incentive policies, which should lead to social economy enterprises becoming the key player in revitalising investment dedicated to social, environmental and solidarity-based objectives.

1.8. The EESC believes that the form taken by social economy enterprises may make them ideal for new kinds of digital-platform-based entrepreneurship and in particular for sharing-economy activities, given their propensity to actively involve the workers and the users of digital platforms.

1.9. The EESC stresses that decent working conditions and democratic governance are key elements for social economy enterprises and that, where these elements are not provided for by statute, as they are in social and workers’ cooperatives, provision should be made for specific forms of consultation and worker participation.

1.10. The EESC believes that social economy organisations, and in particular voluntary associations, are fundamental to cohesion, nurturing social capital and supporting the responsible role played by civil society.

1.11. Volunteering among young people is a key resource for increasing the employability and human capital of the new generation, creating a positive effect that increases employment opportunities. This would also appear useful for reducing the phenomenon of NEETs and it would be worth putting in place policies to facilitate the transition from volunteering to stable forms of paid employment.

1.12. Finally, the EESC advocates and hopes that the Action Plan for the Social Economy provides the opportunity to deploy operational tools and practical legislative proposals.

2. General comments

2.1. With this exploratory opinion, requested by the Portuguese presidency of the Council of the EU, the EESC is pleased to contribute to the pursuit of its programme priorities, with particular regard to promoting the European social model, by identifying specific proposals on the role of social economy enterprises in creating stable and decent work and a more inclusive, sustainable and resilient economy.

2.2. The social economy is increasingly being recognised at international level as playing a pivotal, important role, with the ability to harness the organisational and transformative capacity of civil society. Legislation has been produced in several Member States recognising its aims and functions and outlining the structure and legal form of organisations recognised as pertaining to the social economy (1).

2.3. With regard to legal recognition, the EESC has pointed out in its opinion INT/871 (2) that social economy organisations and enterprises put social objectives before the role of capital, not least through democratic governance involving a range of stakeholders. They are not private for-profit companies and, even if they achieve ‘limited profitability’ through business activities, the profits go towards the pursuit of their statutory objectives and the creation of jobs.

https://betterentrepreneurship.eu,
https://ec.europa.eu/commission/presscorner/detail/en/MEMO_11_735,

2.4. The substantial recognition of the social economy is supported by papers produced by international institutions and bodies such as the OECD, the United Nations, the ILO, and the various institutions of the EU, including the EESC, whose 13 opinions on the social economy between 2009 and 2020 have identified four categories of social economy organisations and enterprises: cooperatives, associations, mutual societies and foundations, to which social enterprises have been added more recently.

2.5. Although the most representative criteria and concepts of the social economy, such as the primacy of the individual over capital, the reinvestment of profits and participatory governance, have been recognised by the European Union (3), it has not yet been possible to reach agreement on a standard European legal definition. In 2018, Parliament proposed the introduction of certification for social economy organisations based on Article 50 TFEU. The EESC believes that, for this to become a reality, more effective and standardised gathering of statistics is needed for the purpose of mapping social economy organisations and enterprises, on the basis of a common operational definition, as is the case in countries that have established public registers of social economy organisations and enterprises.

2.6. A recognised and formally accepted working definition for the EU institutions is now increasingly needed, particularly to allow access to the many opportunities for growth and development, as well as to foster better understanding of the social economy among public and private institutions.

2.7. Such a definition is vital to ensuring full access to the capital market, where there is growing interest in social-impact investments. The Action Plan for the Social Economy is a good opportunity to address this issue; at the same time, the new action plan for A Capital Markets Union for people and businesses (4) should also consider the role of the social economy in attracting investment in Europe for a people-friendly economy.

2.8. The function of social economy organisations and the economic value they generate appear to be very significant, both in terms of size (8% of European GDP) and in terms of the quality and persistence of this value (5), which, even during the years of the financial crisis, saw an increase in both the economic value produced and the number of workers employed.

2.9. The social economy has an important role in creating and maintaining employment, providing more than 13.6 million paid jobs in Europe, and accounting for around 6.3% of the EU-28 working population (6), more than 232 million members of cooperatives, mutual societies and similar entities, and more than 2.8 million enterprises and organisations. Some 2.6 million of these workers are workers in social enterprises meeting the requirements set out in the Social Business Initiative of 2011.

2.10. While many workers in the social economy are employed by small organisations and enterprises, there are cases of large social economy enterprises, sometimes employing hundreds or thousands of people. A large proportion of employment is in organisations with democratic participatory governance, which points to a correlation between broad participation of stakeholders in governance and the tendency to maintain high levels of employment, as well as a better ability to withstand shocks (7).


(5) This data is from the following European Commission publication: https://ec.europa.eu/social/BlobServlet?docId=22304&langId=en

(6) This data is from the following EESC report: https://www.eesc.europa.eu/sites/default/files/files/qe-04-17-875-en-n.pdf

2.11. A significant feature of the social economy is the large number of female workers, who account for over 70% of the labour force in many cases, with the percentage generally above 50% elsewhere. Although further steps are needed to achieve full equality, the presence of women in management and senior positions in many social economy organisations is significant. Significant pay equity can therefore be seen in these organisations and enterprises — both between the different positions in the organisational hierarchy and in terms of wages, which are not excessively gender-imbalanced.

2.12. Greater pay equity does not compensate for the fact that, in some cases, the wage levels of workers in social economy organisations and enterprises remain at the lower end of the income scale. This is partly due to the undervaluing of care work, which too often is not given adequate economic recognition even in conventional forms of business. In this respect, it is important to strengthen the union rights of workers in the social and care sector.

2.13. Also important is the role played in promoting and implementing social innovations, which shows that these organisations can interpret and support societal changes, serving to mobilise human capital resources in the form of active and solidarity-based participation, with more than 82.8 million volunteers.

2.14. The large number of people active in important sectors, as well as the social and technological innovation challenges faced by social economy organisations and enterprises, need to be supported by appropriate lifelong learning and qualification measures for the development of professional and organisational skills.

2.15. The EESC therefore considers it highly appropriate for the European Commission to announce an action plan for the social economy and specific measures to implement the European Pillar of Social Rights, with a dedicated action plan, on which the EESC has already set out its views in opinion SOC/614.

3. Proposals for a European policy to support and promote the social economy

3.1. In order to give further impetus and heft to the contribution of social economy organisations and enterprises and to build a ‘more social, resilient and inclusive Europe’, legislative measures and European economic policy programmes need to be introduced that promote and foster the growth of these organisations and enterprises, not least because of the contribution they can make to a sustainable, ecological and solidarity-based development model.

3.2. To this end, we believe it is possible to identify measures at four levels:

— a taxation system that recognises the general-interest role played by social economy enterprises, with particular regard to those operating in sectors of primary public interest, such as social, health, educational and social inclusion services;

— policies to promote public and private investment that fosters the development of social-impact finance — further improving market access to public procurement and concessions;

— policies to support the stable employment and economic leadership of workers in social economy enterprises, especially in their democratic governance; and

— support policies to implement new skills and foster the dissemination of innovation and new technologies in civil society.

3.3. While recognising the fundamental role played by social economy organisations and enterprises in the area of personal services and social services, the EESC considers that states and public administrations still have vital responsibilities to ensure essential services for citizens.


3.4. Measures to support employment in social enterprises whose remit involves integrating workers with disabilities or severely disadvantaged workers into the labour market should be further strengthened. These measures should seek to reduce the tax and social security burden affecting labour costs, through public authorities paying the necessary contributions to ensure that these disadvantaged workers are covered by insurance and social security protections. Such incentives should not be considered as State aid to social economy enterprises, as they are intended to support full labour market inclusion for severely disadvantaged people. In any case, the incentives should only be granted to organisations that respect collective bargaining agreements and the fundamental rights of workers.

3.5. In many cases, social economy enterprises are the main provider of essential services for the community — such as social, health and educational services, care or training and job integration services for disadvantaged people — and manage activities which, even if of a commercial or business nature, are always ones that have a strong community and local value and involve the profits being reinvested for their statutory objectives. They are services that are delivered with the direct involvement of the recipients themselves and are firmly rooted in the local community, which is part of the mission they carry out. Those characteristics cannot therefore be assimilated unconditionally with market competition regimes. As a result, some of the current ‘State aid’ rules that prevent the introduction of a tax system recognising the social merit and public interest of these organisations should be relaxed.

3.6. Moreover, for the same reason and as already called for in opinion INT/906 (10), the EESC considers that the EUR 500 000 de minimis ceiling on services of general economic interest over three tax years should be at least EUR 800 000 per tax year.

There is also a need for rules on access to public funding that are harmonised on the basis of uniform criteria, transparent, and in compliance with the labour rules and the rules on the application of sectoral collective agreements.

3.7. It is important to identify tools to increase social-impact investments in social economy organisations. To this end, some interesting experiments have been carried out with specific bonds and equity (or quasi-equity) securities in social economy enterprises, linked to the pursuit of social objectives of general interest.

3.8. Applying preferential taxation in regard to these financial instruments could create significant growth drivers for investors, given that historical data already confirm that social economy organisations have been able, even with limited investment, to generate many jobs and social benefits for the users of the services they provide.

3.9. It is, however, necessary to provide for proper metrics that make it possible to measure and compare the results obtained, such as stable employment growth, the application of high standards of safety at work and verification that the social objectives underlying the initiative have been achieved. Member States should therefore adopt framework laws on the social economy and actively implement policies conducive to the growth and development of social economy enterprises.

3.10. As far back as 2011, the European Commission identified the need to improve the level of public knowledge and collection of data and statistics on social economy enterprises. However, much remains to be done to set coordinated standards, which, moreover, would also be particularly useful in order to avoid ‘social washing’ or inappropriate access to the support measures.

3.11. This could lead to the designation of national authorities, in the Member States that have not yet implemented them, responsible for monitoring and verifying compliance with the requirements and standards and consistency with the social objectives.

3.12. Among the specific support measures, one of the most important is participation in the public procurement and concessions market, for which significant instruments were already proposed by Directive 2014/24/EU (11), but have not been adequately implemented in all Member States. In order to encourage socially responsible public procurement, the European Commission should lead by example and make the most of its own tendering procedures to pursue social policy objectives.

3.13. Other support measures that seem worth considering include ones aimed at the restructuring of productive and service activities, or the transfer of these activities from companies in crisis or from entrepreneurs at the end of their careers to workers, organised as cooperatives or in participatory enterprises.

3.14. These experiments, known as worker buy-outs (WBOs) (12), already successfully carried out for the resumption of industrial activities in crisis, are now leading to more and more cases where a worker-owned social enterprise is used for the transfer of small businesses. This happens in particular among young people who do not have sufficient capital to start up a business and are often held back by isolation and concerns over tackling market difficulties on their own.

3.15. To increase the potential of these initiatives, an investment and support measure is needed to help business start-ups through a capital investment that finances workers in companies in crisis who choose to return to work by forming a cooperative. In some countries, these initiatives have made it possible to restructure various businesses and safeguard thousands of jobs.

3.16. Fundamental to these industrial restructuring processes is the role of trade unions. Forms of self-entrepreneurship such as WBOs are an integral part of active labour policies. In terms of collaboration between cooperatives and trade unions, an example of good practice is the agreement signed in Italy between the three cooperative federations and the three most representative trade unions to establish systematic cooperation on worker buy-outs (13).

3.17. The EESC hopes that the Action Plan for the Social Economy promotes the introduction in the EU of similar initiatives in all Member States — by setting up a dedicated system under the European Investment Fund or the European Globalisation Adjustment Fund — in order to have practical tools to support the restart of the economic activities that have been disrupted by the crisis caused by the pandemic.

4. New forms of social economy

4.1. Social economy enterprises are developing new employment and social innovation initiatives, including in the context of the green economy and the promotion of sustainable development. We are also seeing an increasing number of circular economy projects carried out by social economy organisations, which are also creating new jobs in the area of reuse and social farming. So far, the legal framework and policies in many Member States have not been conducive to the implementation of policies for developing work integration cooperatives. Action at EU level is therefore desirable, to initiate progress here.

4.2. Of particular interest is the role that workers’ cooperatives (14) can play in making new forms of digital-platform-based entrepreneurship more inclusive in order to make the participation of workers and users more sustainable and shared, so as to develop new forms of mutuality and solidarity by means of new digital technologies, which can facilitate wide participation. This is on the understanding that the protection of platform workers and atypical workers necessarily entails the signing of suitable collective agreements with workers’ trade unions.

4.3. Social economy enterprises can create opportunities for employment and local development, by organising public participation in the delivery of services such as the provision of renewable energy or the organisation of services in decentralised areas and rural areas, such as the French experiment with regional economic cooperation hubs (PTCEs)

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(13) Italy, historic agreement between unions and coops on worker buyouts, CECOP, 2021: https://cecop.coop/works/italy-historic-agreement-between-unions-and-coops-to-promote-worker-buyouts
(14) All for one — Worker-owned cooperatives’ response to non-standard employment, CECOP 2019: https://cecop.coop/works/cecop-report-all-for-one-reponse-of-worker-owned-cooperatives-to-non-standard-employment
bringing together associations, cooperatives, local authorities, traditional businesses and universities to pilot projects in social agriculture, sustainable tourism and the development of environmental and cultural assets.

4.4. Voluntary work plays a fundamental role in the social economy, being important both for the younger generation and for older people, for whom in some cases it represents an important opportunity to maintain an active social and civic role that helps to improve their quality of life. In this regard, it is important to step up synergies between training courses and volunteer hours, as a means of facilitating taking up jobs in the social sector. Greater coordination between periods of volunteering and traineeships could facilitate the training of young and skilled workers.

4.5. The success of the European Solidarity Corps should be built on: it could be expanded by establishing a kind of 'Erasmus for Social Entrepreneurs' to foster cross-border cooperation in the social economy.

4.6. This would also appear very useful for reducing the complex phenomenon of NEETs and it would be worth putting in place incentive policies to facilitate the transition from volunteering to stable employment.

Brussels, 27 April 2021.

The President of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘Vocational training: the effectiveness of systems to anticipate and match skills and labour market needs and the role of social partners and different stakeholders’

(Exploratory opinion requested by the Portuguese presidency)

(2021/C 286/05)

Rapporteur: Jean-Michel POTIER

Request by the Portuguese Presidency of the Council

26.10.2020

Legal basis

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Bureau decision

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Section responsible

Employment, Social Affairs and Citizenship

Adopted in section

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Adopted at plenary

27.4.2021

Plenary session No

560

Outcome of vote

(for/against/abstentions)

222/0/4

1. Conclusions and recommendations

1.1. The EESC reiterates the importance of matching skills with labour market needs. The EESC stresses the crucial importance of having effective training systems and the ability to anticipate skills needs at a time of profound upheavals due to the COVID-19 crisis, which is speeding up the process of change in our economy, especially in the digital and environmental fields.

1.2. In view of the recruitment difficulties faced by European businesses, the EESC stresses the benefits of using dual learning schemes, which can take very different forms, for skills acquisition. The vast majority of employers perform their role honestly as dual-learning trainers, with a view to passing on their expertise. However, particular attention should be paid to anticipating and preventing any abuse linked to zero-cost productive jobs being carried out by students enrolled in these schemes.

1.3. The EESC points out that the varied nature of these schemes means that they can be adapted to best suit different circumstances such as variations in company size, the type of qualification, the structure of the training and the type and level of position to be filled. They also enable employees and jobseekers to acquire new skills to counter the obsolescence of vocational skills.

1.4. The EESC highlights the specific nature of SMEs. Given the technical nature of the work carried out in a large number of SMEs, which requires unique expertise, particularly in niche markets, dual learning could offer a suitable solution to their skills needs. In many rural areas, the expertise of small businesses provides a unique opportunity for young people and a favourable business environment could improve their employment prospects.

1.5. The EESC considers the social partners to be effective players in designing and managing training systems: they are particularly well placed to measure the skills needs of the labour market. They are able to detect skills shortages by sector and by area, thus ensuring that skills are developed efficiently and on the basis of practical work experience. They may rely on stakeholders such as the state, the region or the public employment service (PES) to reconcile quantitative and qualitative data with regard to skills needs.

1.6. The EESC would make the point that the social partners must systematically play a major role in the development of qualifications and their content. It is essential to involve the social partners from the outset to prevent a situation where resources do not meet the real needs of employers and employees in Europe.

Similarly, the social partners are qualified to support career guidance for all target groups.
1.7. The EESC points out that stakeholders (state, region, PES) play an important role in proposing solutions that facilitate social inclusion. The EESC calls for better coordination between all players, stakeholders and social partners, by means of contractual arrangements specifying the interactions and responsibilities of each party in order to make the training and support schemes easier to understand. Civil society organisations, public and non-profit social services, social enterprises, social protection organisations and social workers play a key role in supporting young and not so young people, paying particular attention to people from socially disadvantaged groups. The legal and financial frameworks of some Member States provide an accountable basis for the deployment of these important functions and services. Strong vocational training policies are also essential in order to achieve the goal of promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change, set in Article 145 TFEU.

1.8. The EESC stresses the importance of taking into account the specific nature of SMEs, including very small businesses, in order to meet skills needs in professions under strain. These businesses do not have internal human resources departments, while the training/skills/employment dynamic requires a particular approach. These businesses, which account for a large pool of jobs, need specific support. This support should relate to: identifying their skills needs, putting together job offers, the advisory board, the recruitment process and tailored training systems that lead to lasting employment.

1.9. The EESC points out that training is an essential tool for integrating people with disabilities. Appropriate measures must be taken to tackle the challenge of equal opportunities for people with disabilities, especially women, under conditions of equal access to inclusive vocational training schemes. The EESC also points out that the sustainability of work depends in particular on the right to quality training.

1.10. The EESC recommends drawing up national strategic agreements on vocational training and guidance, on the basis of negotiations between the authorities and the social partners, involving vocational education and training (VET) stakeholders. The EESC notes the existence of such agreements in certain companies, professional sectors and geographical areas and encourages the widespread use of this kind of national strategic agreement. The action taken by the EU should facilitate adaptation to industrial change in order to promote professional integration and reintegration into the labour market.

2. Background

2.1. The relevance of the reflection on the relationship between available skills and labour market needs should be viewed in the European context, as set out in the Osnabrück Declaration, which confirms that the social partners have been taken into account among the stakeholders. This European context includes in particular:

— first, the European Pillar of Social Rights specifies education, training and lifelong learning as its first and fourth principles with regard to equal opportunities and access to the labour market, including from a lifelong learning perspective;

— secondly, in 2020, the European Commission published a Communication on the European Education Area, reaffirming its principles for action and objectives, including quality education for all;

— finally, in its opinion SOC/570 (1) on the future of work and acquiring skills, in order to prepare for and respond to the rapid technological and digital changes, the EESC called for targeted policies to be developed and concrete measures to be taken to improve and adapt education and training systems.

2.2. The issue of matching available skills with labour market needs is viewed differently across EU countries. Discussions on what is known as the skills mismatch had started before the COVID-19 crisis, and the EESC called for caution in dealing with this issue. According to Cedefop, 45% of workers believe that their skills do not fully match the job they are in, while 70% of companies suffer from skills shortages, but few of them associate these difficulties with the obstacles encountered, such as a recruitment problem, the geographical location of the company, the level of pay and working conditions. An in-depth study should analyse the exact reasons for the skills mismatches and how to help the people concerned find a job.

(1) OJ C 237, 6.7.2018, p. 8
2.3. Skills needs
The skills required vary from country to country. However, this variation depends on the level of the country’s industrial production system, which stands in contrast to the needs of service- or tourism-oriented economies. While the general level of sought-after skills tends to be high, there is also a need for lower-level qualifications, which immigration is used to meet.

2.4. The education system
Vocational training is the educational sector in closest contact with the labour market and its skills needs. Initial vocational training is usually given at upper secondary level and takes place either in schools or in work-based settings in training centres and companies. The proportion of young people in vocational training compared to general education varies across the European Union but it is gradually decreasing everywhere. This generally leads to corrective measures or incentives initiated both by the public authorities and by the professional communities, including the social partners. Among these measures, the new Skills Agenda focuses on the digitalisation of training content.

The continuing vocational training system focuses mainly on work and the majority of training activities take place in the workplace.

2.5. The role of the social partners
This role, which exists at different levels in all countries, should be strengthened. On the strength of their experience, the social partners are involved in the process within the professional sectors or at national cross-industry level of identifying current and future skills needs. They are also very often involved in defining the standards for qualifications and diplomas, in managing training systems, in managing vocational training and apprenticeship funds and in the lifelong career guidance system. In addition, vocational training is a matter that is generally negotiated by the social partners as part of collective bargaining.

3. General comments
3.1. The EESC notes a growing imbalance in the labour market, linked in particular to a skills gap, with the additional impact of the health crisis, which is widening the gap between young people’s needs and skills in an increasingly concentrated economy.

3.1.1. This situation, which existed before the health crisis, has developed and worsened over the last 20 years or so. 60% of adult employees are at risk of seeing their technological skills become obsolete (EU-28 data in 2014) (2). The situation has resulted in the coexistence of unemployment and strain on the labour market (3) (4).

3.1.2. One effect of the health crisis has been an acceleration of labour market tensions, in particular those resulting from the rapid development of the digital transformation.

3.2. The EESC welcomes the European Skills Agenda and in particular the fact that the Council Recommendation on vocational education and training (VET) for sustainable competitiveness, social fairness and resilience can cover measures at all stages of professional training process, and address the changing nature of all types of needs and skills:

(a) at each stage of the professional training/career path (reference Cedefop — skills panorama) (5):

— before entering working life:

— through skills development and professional training (initial and continuing vocational training, dual learning, apprenticeship);

— when starting at a company, or in the case of internal mobility:

— through adaptation of professional and soft skills in the company context (support for adapting to the workplace, on-the-job training);

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— throughout working life:

— through adaptation of professional skills to changing employment and occupational needs:

(b) by adapting schemes to the needs arising from changing employment situations: upskilling; reskilling; cross-skilling; new skills;

(c) depending on the type of skills targeted: basic skills; technical skills and professional expertise; transferable skills.

3.3. Statements by organisations representing employers and employees of market enterprises at European level put forward proposals which support their legitimacy to intervene in this sector.

Thus, the European Trade Union Confederation (ETUC) promotes social dialogue in this field, both at European and national level; SMEunited considers that governments should delegate the governance of apprenticeships to the social partners; BusinessEurope advocates the development of training programme needs by the social partners and joint negotiation with training providers in the area of employee training.

3.4. The role of the stakeholders

The EESC calls for the social partners to be involved alongside other stakeholders to help identify the needs, resources and actions to be implemented and work in consultation with them, building on the resources that the latter are able to deploy. This is the case in particular of: companies, professional branches and other professional and inter-branch organisations, sectoral and national social partners, national qualifications frameworks or systems for the classification for professional qualifications (NQF), regional authorities and public or semi-public bodies, and national authorities, civil society organisations, social enterprises, social services, social protection organisations, institutions providing guidance and support for integration, reintegration and placement, including for persons with disabilities, and initial vocational training institutions (IVET/CVET (*)).

4. Specific comments

4.1. Anticipating future skills needs

4.1.1. The social partners play a pivotal role in identifying, assessing and anticipating skills needs in the labour market. Their role is essential in facilitating the jobs and skills observatories and in analysing the data collected. Their analysis should be linked to the assessments made by all other stakeholders: state, regions, chambers and all bodies working in the area of employment, training and career guidance, such as social services and bodies. This cooperation helps to put Europe at the centre of the labour market.

4.1.2. For the EESC, this essential role must be recognised by providing the social partners with all the means necessary to act in step with the major transformations taking place in the labour market. The ongoing health, financial and social crisis, which began in 2020, has proven to be a powerful force for accelerating changes in our economy. In order to adapt, digitalisation is an absolute necessity for businesses, including the smallest companies. The green transition — in addition to the new jobs that it will bring — is now a clear expectation among customers and consumers as a result of the effects of the crisis.

4.2. Making the training on offer and its content more efficient

4.2.1. Training and qualification frameworks need to be updated regularly on the basis of the skills needs assessment in order to avoid them becoming obsolete. For example, skills linked to new technologies, to the requirements of the green transition and to the digital changes that have been accelerated by the health crisis require rapid responses. For target groups that are difficult to reach, innovative teaching practices should be adapted using appropriate inclusive methods.

(*) VET providers — VET4EU2 https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=38451&no=1;
The principle of dual learning allows training systems to be combined with companies' training resources, with the latter greatly helping to get people into lasting employment in order to encourage the development of economic activities. While the vast majority of employers fully fulfil their role as dual-learning trainers, particular attention should be paid to anticipating and preventing any abuse linked to zero-cost productive jobs being carried out by students enrolled in these schemes.

4.2.2. These dual learning schemes can take different formats:

— vocational training for young and slightly older people through apprenticeships, with a view to obtaining a full professional qualification for a particular occupation;

— initial vocational training including internship periods spent in a company, as part of a dual learning scheme;

— immersion traineeships in companies, including those aimed at getting to know a particular occupation;

— dual vocational training for job seekers;

— in-house company training in the workplace;

— training prior to entering the workforce in order to acquire the skills needed to perform a particular type of work;

— independent living training, skills analysis, in particular for people in difficulty, people with disabilities and young people leaving school without qualifications.

4.2.3. Finally, making training more efficient should provide solutions for people in the most precarious situations. It is essential to take disability into account in terms of material and physical accessibility to the training system and educational response to the target groups.

4.3. Better involvement of social partners and stakeholders

4.3.1. In addition to a voluntary approach, making contractual arrangements with key players reinforces these good practices in order to better anticipate skills needs and to boost the efficiency of vocational training systems.

4.3.2. It must be ensured that stakeholders play a key role in social inclusion, by effectively distributing roles that involve supporting and monitoring the most vulnerable persons. Through training pathways and with essential support, the stakeholders have a special role to play in helping those who are struggling to get into employment.

4.3.3. The success of the vocational training system depends on actively involving the social partners in designing it. Cooperation between the two learning sites — the training providers and the company itself — is a key factor for success. Defining national or regional policies should give the social partners flexibility to adapt the structure and content of training to the needs of employers and employees in the particular context of the labour market.

4.4. Attracting the interest of businesses and employees in investing in training

4.4.1. The proportion of employees benefiting from training to maintain their skills or upskilling each year remains too low, especially in small and medium-sized enterprises. There are many obstacles: funding for training and difficulties for employers as regards replacing staff in training, rejection of initial training, and the availability and quality of training content and systems for employees.

4.4.2. In this regard, basic skills remain essential prerequisites for access to employment, in particular in SMEs. The impact of the COVID-19 crisis is taking a heavy toll on young people in training and is increasing the drop-out rate; this makes the issue of support and lifelong career guidance more urgent. This issue is crucial for attracting the interest of employees and jobseekers, as it gives them the opportunity to become active players in their own career development. A suitable target would be for 8% of apprentices and in-service trainees to be able to benefit from a period of mobility abroad; Erasmus impact studies highlight the gain in skills and employability resulting from a period of mobility.
4.4.3. Finally, there is the question of how businesses determine candidates' skills — especially those that do not have an internal human resources department.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
ANNEX

EXAMPLES OF GOOD PRACTICE

In Austria, starting an apprenticeship from 15 years of age
In this country, 45 % of 15-19 year-olds are apprentices. In the majority of cases, training for young people who opt for dual learning between school and a company lasts three years. 130 000 young people are apprentices. They spend 80 % of their time in a company, i.e. four days of practical training and one school day per week.

Apprenticeships are a legally guaranteed right: students who are not able to find a company for their apprenticeship due to poor results at school are trained in public workshops.

In general, in Austria, an apprentice is three times more likely to find a job than a young person who has stopped just after compulsory schooling. The unemployment rate for people under 25 was 9.6 % in 2018.

‘Operational preparation for employment’ (POE) in France
Operational preparation for employment is a rapid response to professions under strain. This training enables people to acquire or develop the professional skills needed to meet an identified recruitment need.

POE is jointly run by Pôle emploi (the Public Employment Service) and the company or occupational sector. It lasts no more than 400 hours and includes a period of immersion in a company and entitles people to the status of trainee in vocational training and to remuneration. After completion, if the level required to fill the post is reached, a fixed contract is signed with the company that selected the candidate.

Over the last three years, 70 000 trainees a year have benefited from POE, with an employment rate of around 80 %.

The role of the social partners in Germany
The expertise of the social partners ensures that occupational profiles are in line with labour market requirements so that the components of training can be easily integrated into companies’ production and service delivery processes.

In Germany, vocational training agreements are most often negotiated by the social partners and then enshrined in sectoral collective agreements. Where the training content no longer meets the needs of the labour market, the social partners review the training or create new training courses for new professions.

Based on public funding and governed by social law (Sozialgesetzbuch), autonomy and professional support for disadvantaged young people and young people with disabilities are supported by social protection-apprenticeship organisations and their professional services.

Negotiation of a strategic agreement on vocational training in Portugal
In the framework of the Standing Committee on Social Dialogue, the Portuguese government has launched a negotiation process for a strategic agreement on vocational training and lifelong learning. A working group is currently bringing together government representatives, supervisory bodies and social partners to conclude an agreement on the governance, regulation and financing of the training system. The agreement also aims to improve the quality of training, the ability of the national qualifications framework to adapt quickly, the response to sectoral needs, incentives for businesses and individuals to train, pedagogical innovation, and digital and distance learning.

The dual system in Poland
In the Polish education system, dual training is a combination of school education for theoretical knowledge and work in a company to gain practical experience. The duration of training based on vocational schools varies from two to five years. As part of a dual training system, practical training takes place under a vocational training contract. The theoretical training is the subject of an apprenticeship contract between the head of the educational establishment and the employer taking on the apprentice. Since September 2019, all vocational students who do not take part in this scheme have access to a paid study traineeship with an employer. It should be noted that craft trade enterprises have developed dual training with 23 500 craft professionals and worked with almost 65 000 young people.
Opinion of the European Economic and Social Committee on 'How to promote, based on education and training, from a lifelong learning perspective, the skills needed for Europe to establish a more just, more cohesive, more sustainable, more digital and more resilient society'  
(Exploratory opinion at the request of the Portuguese presidency)  
(2021/C 286/06)

Rapporteur: Tatjana BABRAUSKIENĖ

Request by the Portuguese Presidency of the Council  
Letter of 26.10.2020

Legal basis Article 304 of the Treaty on the Functioning of the European Union

Section responsible Employment, Social Affairs and Citizenship

Adopted in section 16.4.2021

Adopted at plenary 27.4.2021

Plenary session No 560

Outcome of vote (for/against/abstentions) 219/1/1

1. Conclusions and recommendations

1.1. The EESC underlines the importance of making efficient use of the Recovery and Resilience Facility (RRF) and other investments to support economic growth and a resilient society within the digital and green transition of the economy, by improving the quality and inclusiveness of education and training (systems, institutions and programmes) in order to respond to the needs of learners of all ages and stages in their learning, to prepare them for life and work, and to ensure that all workers, as well as the increased numbers of people not in employment, especially women, have access to training. This will also help to safeguard the free movement of workers and services and ensure that companies are well equipped to handle developments in their industry and to close the skills gaps they face in the digital and green transition of industries.

1.2. The EESC recommends setting achievable long-term goals and establishing a constant monitoring system within the European Education Area (EEA) for each Member State aimed at achieving high-quality and inclusive education and training for all and ensuring that everyone has the knowledge, skills, competences, and attitude needed for Europe to establish a more just, more cohesive, more sustainable, more digital and more resilient society.

1.3. The EESC points out that democratic governance of education and training systems — for example through social dialogue — within the next EU strategic framework is an essential tool for successful policy development and implementation at EU and national level. It needs to be secured, strengthened and involve meaningful consultation with organised civil society.

1.4. The EESC recommends that each future ‘Open Method of Coordination working group’ should present policy outcomes, and preferably policy recommendations, to the Education Council for discussion. The outcomes of the working groups should be publicised, effectively implemented, and given a high profile at the appropriate policy-making level and amongst practitioners at EU and national levels; it is therefore important that the members of these groups include the relevant social partners and stakeholders active in education policy development, as well as representatives of school heads, teachers and students from each country.

1.5. To meet the indicators, benchmarks, and targets in the Action Plan on the European Pillar of Social Rights, the Council Resolution on the EEA (2020), the Council Recommendation on VET and the Osnabrück Declaration, the EESC proposes to carry out additional research and an impact assessment to adjust the indicators and to add other necessary ones which support countries in improving their reporting on implementation, as the full impact of the COVID-19 crisis on education systems, students and teachers is not yet clear. The indicators should also lead to measures...
that support socioeconomically disadvantaged students and learners as well as those with disabilities with joint social and education policies at national level. Achievements on meeting benchmarks and indicators should be reported following consultation with the relevant social partners and stakeholders at EU, national, regional and local levels.

1.6. The EESC suggests continuing the key work carried out at the presidency-led informal cooperation meetings on education sectors (DG School, DGVT, DGHE) (1), finding synergies between them, and raising their profile, with the involvement of the relevant social partners from each EU country and in consultation with the appropriate civil society organisations, following the example of the Advisory Committee for VET. It also recommends linking EU and national/regional policies together, in the context of effective partnerships between and governance by ministries, social partners and civil society.

1.7. The EESC calls for the effective implementation of the first principle of the European Pillar of Social Rights (EPSR) at European and national levels under the Action Plan to implement the European Pillar of Social Rights to be adopted at the 2021 Social Summit, with the full involvement of the relevant social partners and civil society organisations, and with the support of sustainable public investment and the RRF.

1.8. The EESC draws attention to the holistic approach to education and training and the importance of taking such an approach to the implementation of recent EU initiatives on education (European Education Area), VET (VET Recommendation), skills (European Skills Agenda), youth education (Bridge to Jobs) and digital skills (Digital Education Action Plan 2021-27), ensuring that they contribute to equal access to quality education and training, reskilling and upskilling of workers for a just transition in the labour market, providing support to help low-skilled adults to find employment and to obtain entrepreneurship skills, and helping businesses to catch up with global innovation and competitiveness.

1.9. The EESC underlines that the implementation of the Digital Education Action Plan 2021-27 needs to ensure effective social dialogue and consultation with stakeholders, respect and enforcement of labour rights, and worker information, consultation and participation in digital skills and entrepreneurship skills development, in particular in VET, adult learning and employee training to reduce the skills gaps companies face. With reference to the Court of Auditors’ report, in order to meet the European Commission’s target to increase the proportion of 16 to 74 year olds with basic digital skills from 56% in 2019 to 70% in 2025, the EESC calls for the allocation of specific amounts within future EU programmes, the definition of sub-objectives and milestones and the consistent assessment of digital skills in a constantly and rapidly changing digital environment.

1.10. The EESC calls on the Member States to ensure effective support for the employed and unemployed people who face difficulties in accessing quality and inclusive adult education and training by ensuring targeted funding for those in need, such as the unemployed, non-standard workers, the low-skilled, people with disabilities, older workers, senior citizens and people from socioeconomically disadvantaged groups while taking into account the gender dimension.

1.11. The EESC proposes combating increasing inequalities in schools and the broader society by effective joint social and education policies at a national level. The EESC suggests holding a joint Council meeting between the education and social affairs ministers to find solutions to tackle educational inequalities and unequal access to education and training as a consequence of the COVID-19 crisis.

1.12. While welcoming the targets set in the new Resolution on the European Education Area, the EESC proposes regularly adjusting the indicators and benchmarks of the EEA and adding other necessary ones (e.g. on green skills and competencies/learning about sustainable development) on which countries can easily report, including in order to ensure that national measures efficiently support socioeconomically disadvantaged students and learners.

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(1) Meeting of Directors-General of School Education, Directors-General of Vocational Education and Training, and Directors-General of Higher Education.
1.13. The EESC points out that it is vital to develop social competences for all learners from a lifelong learning perspective, to ensure that these competences are taught from an early age and throughout adult education, and to fight for tolerance and non-discrimination in education and training for all citizens. Teaching of key competences, especially social sensitivity, empathy, intercultural dialogue, citizenship skills, social competences, and entrepreneurship, including social entrepreneurship, should be applied across the whole education and training process.

1.14. The EESC calls on the Member States to use the Recovery Plan, the Next Generation EU and other EU funds, including Erasmus, ESF+ and the Just Transition Funds, efficiently and consistently to support education and training policies for a more just, more cohesive, more inclusive, more sustainable, more digital and more resilient society.

1.15. The EESC believes that the European Semester process needs to continue encouraging governments to ensure sustainable public investment in long-term commitments to improve quality, fairness, equality and social inclusion in schools, enhance equal access to digital material for all learners of all ages and support the safe use of digital technologies in schools and education institutions.

1.16. The EESC underlines that knowledge, skills and competences must be recognised and acknowledged, respecting each Member State’s educational and professional requirements. Ensuring equal access to full qualifications is fundamental, and the EESC therefore calls for the implementation of the Council Recommendation on the Validation of non-formal and informal learning (2) and the Lisbon Recognition Convention (3). The EESC reiterates its opinion (4) that training leading to micro-credentials should have quality standards and clear information about the value of training in order to be effectively used in the labour market as further training and be added to a full qualification. It is important not to overregulate micro-credentials in order to preserve their flexibility to the needs of the labour market.

1.17. The EESC calls for the implementation of the EEA at national level — following effective social dialogue with the teachers — to enhance the quality of teaching in the digital era, raise standards in teaching, develop higher quality and inclusive initial teacher education and continuous professional development, and ensure decent working conditions and salaries for teachers to make the profession more attractive for highly skilled candidates.

1.18. The EESC highlights the need to respect academic freedom and the autonomy and governance of higher education institutions in relation to their contribution to lifelong learning, and to ensure appropriate public investment in higher education and research, the inclusiveness and diversity of University networks in Europe, and respect for national and institutional competences with respect to higher education. The EESC calls for ideas on what has been called the ‘European Degree’ and ‘European University Statute’ to be further discussed with governments and the relevant social partners and civil society organisations and for support for the development of tertiary-level VET offerings.

2. Background

2.1. This opinion is a contribution to the Council discussions under the Portuguese Presidency (first semester 2021) on implementing EU initiatives on education, training and lifelong learning, in particular the EEA, Updated Skills Agenda and Digital Education Action Plan 2021-27.

2.2. Growing income inequality, human mobility and an ageing population are social factors influencing education and training policies. At a time when society is facing economic imperatives such as the digital transformation and the circular economy, support for individuals’ learning might be one of the solutions for a more sustainable society, in order to overcome the obstacles and challenges of social and economic transformation while promoting skills to learn.

(2) 2012/C 398/01.
(3) The Lisbon Recognition Convention.
2.3. The leaders of the EU countries met at the Gothenburg Summit on 17 November 2017 to sign the EPSR and, on that occasion, started their first discussions on launching the so-called European Education Area (\textsuperscript{1}); this was followed by several new proposals on the subject from 2018 to 2020 and led to the new Council Resolution in February 2021. The initiative relates to the first principle of the Social Pillar, which stipulates that everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market, as well as to the rights mentioned in the fourth principle including support for training and re-qualification, especially the access of young people to continued education, apprenticeship and traineeship.

2.4. The EC published its new policy package on 1 July 2020, including the Communication on a European Skills Agenda for sustainable competitiveness, social fairness and resilience (\textsuperscript{2}), a Proposal for a Council Recommendation on Vocational education and training (VET) (\textsuperscript{3}), and a Communication (\textsuperscript{4}) and Proposal for a Council Recommendation (\textsuperscript{5}) on Youth Employment Support: a Bridge to Jobs for the Next Generation. These policy documents linked lifelong learning, upskilling and reskilling to implementing and achieving the EEA. The EESC followed up these initiatives by adopting opinions in 2020 on the Updated Skills Agenda (\textsuperscript{6}), Reinforcing the Youth Guarantee (\textsuperscript{7}) and Towards an EU strategy for enhancing green skills and competences for all (\textsuperscript{8}).

2.5. In its opinion Use-value is back: new prospects and challenges for European products and services (\textsuperscript{9}) (2019) the EESC expressed the view that innovative, highly-specialised products and services that catered to customers' needs, as well as to social and environmental sustainability, could become the essence and focus of modern European competitiveness. Therefore, it recommends policy interventions for relevant education and training services.

2.6. On 30 September 2020, the EC published a Communication on Achieving the European Education Area 2025 (\textsuperscript{10}), focusing on six areas: quality, inclusiveness and gender equality, green and digital transitions, teachers and trainers, higher education and geopolitical dimensions. The EU Education Council of 30 November 2020 underlined the importance of national competence for education and respect for the diversity of cultures and education systems, and queried the ‘governance mechanism of the European Education Area and the Union level targets proposed to be reached by 2030’ (\textsuperscript{11}).

2.7. Adding to the previous policy initiatives, the EC’s Communication on Digital Education Action Plan 2021-2027 — Resetting education and training for the digital age (\textsuperscript{12}) was followed up by Council conclusions underlining that digital education should be ‘learner-centred and support all individuals and citizens to develop their personality and skills confidently, freely and responsibly’ (\textsuperscript{13}).

3. General comments

3.1. The COVID-19 pandemic has been pushing the European economy into deep recession and pushing up the unemployment rate due to the unprecedented downturn of the economy and challenges faced by companies in the crisis. In spite of the widespread use of job retention schemes, supported by European and national instruments, unemployment in the EU is forecast to rise from 6.7% in 2019 to 7.7% in 2020 and 8.6% in 2021, before falling somewhat to 8.0% in 2022 (Eurostat, 5 November 2020). The high unemployment rate due to the COVID-19 crisis is adding to increasing demands for skills and the upskilling and reskilling of the European workforce due to the digital and green transition of industry. Effective EU policy needs to support economic growth and a resilient society.

\textsuperscript{1} COM(2017) 673 final.
\textsuperscript{2} COM(2020) 274 final.
\textsuperscript{3} COM(2020) 275 final.
\textsuperscript{4} COM(2020) 276 final.
\textsuperscript{5} COM(2020) 277 final.
\textsuperscript{6} OJ C 10, 11.1.2021, p. 40.
\textsuperscript{7} OJ C 10, 11.1.2021, p. 48.
\textsuperscript{8} OJ C 56, 16.2.2021, p. 1.
\textsuperscript{9} OJ C 97, 24.3.2020, p. 27.
\textsuperscript{10} COM(2020) 625 final.
\textsuperscript{12} COM(2020) 624 final.
\textsuperscript{13} 2020/C 415/10.
3.2. The COVID-19 crisis also accelerated the digital transition in education, work and everyday life. The EESC opinion on the Updated Skills Agenda underlines that ‘all Europeans should have the right to access quality and inclusive training and LLL within a just transition and in relation to demographic changes. We highlight the need to address educational poverty, which has deepened as a result of unequal access to education and training during the COVID-19 crisis.’ (18) Knowledge, skills and competence development need not only to serve the needs of the labour market and the prospects of total quality-based competitiveness but also to prepare learners to be active, democratic citizens and to help reduce social and educational inequalities. To this end, besides ensuring the improvement of EU citizens’ digital skills, digital media literacy is crucial to ensure that citizens are able to navigate through the complexities of today’s world.

3.3. It is vital that EU- and national-level policy measures ensure that education and training are human rights and a public good and respect the cultural diversity of Europe and that education and training policies are national competences. EU- and national-level policy needs to take effective steps to implement the 2030 Agenda for Sustainable Development of the United Nation (UN) and the European Pillar of Social Rights in order to achieve good quality, effective and inclusive education and training for everyone in every European country, by involving all the Member States, social partners and civil society organisations in the Action Plan to implement the European Pillar of Social Rights.

3.4. It is essential that the EEA be about enhancing further policy cooperation among the EU countries and continue providing a learning platform for ministries, education social partners and the relevant stakeholders of civil society. Effective governance requires consistent education and training policies to be applied to every education sector from early childhood education up to adult learning, including VET for all age groups and linking of EU and national/regional policies together in the context of effective partnerships between ministries, social partners and civil society, within tripartite policy groups.

3.5. The EESC refers to its opinion on Sustainable funding for lifelong learning and development of skills, in the context of a shortage of skilled labour (19) and underlines that sustainable public investment in education and training and effective private investment in vocational education and training for all ages are prerequisites for the success of policy measures for social and economic inclusion of learners of all ages and support to companies. Therefore it is important that the Recovery Plan, the Next Generation EU and other EU funds (e.g. ESF+, Just Transition Funds) be used efficiently and consistently to support education and training policies in relation to the European Semester.

3.6. Since several indicators and benchmarks of the ET2020 Strategic Framework have not been achieved, the EESC welcomes the fact that many of the indicators have been strengthened in the EEA initiative. However, these indicators are highly challenging and require a financial commitment from governments. It is also essential to clarify the terms used as indicators by each country and to enhance education on a sustainable environment as a benchmark.

3.7. The COVID-19 crisis has made it clear that schools are essential for students to be able to develop their social competences. Students should be taught to improve these competencies throughout their lives by means of learning to learn and active participation in society, by learning about different cultures, languages and, mobility, improving their knowledge of the arts, etc. These competencies are especially important as many historical examples have shown that economic and financial crises contribute to the growing trend of radicalism. Therefore the EESC would point out the importance of taking steps to further implement the Declaration on Promoting citizenship and the common values of freedom, tolerance and non-discrimination through education (2015) (20), applying it to learners of all ages.

3.8. To improve the **green skills, competences** and attitudes of everyone in Europe, the EU Member States need to connect environmental policies to education policies and set up national green skills and competence strategies. The EESC notes (21) that indicators and benchmarks on green skills and competencies could be developed at EU level on climate change awareness, environmental responsibility and sustainable development in order to help countries incorporate green skills and competencies embracing a transformative education approach into education curricula from an early age onwards, including in adult learning, as part of lifelong learning.

3.9. The EESC welcomes the fact that the **Digital Education Action Plan 2021-27** focuses on equal access to digital tools, the internet, and digital competence and skills development, in particular for women in STEM and IT professions. Effective **national and company-level skills and digitalisation strategies** should support workers with the provision of relevant and high-quality training. It is important that **companies also receive support** to ensure the upskilling and reskilling of their workers, in particular in the digitalisation of their jobs. This is also in line with the green transformation of industry — in terms of products and processes — being both a necessity and an opportunity for European entrepreneurship.

3.10. Respecting **full qualifications** is fundamental. As regards achieving **automatic mutual recognition** by 2025, the EESC underlines that knowledge, skills and competences must be recognised and acknowledged, respecting each Member State’s educational and professional requirements, and access must be improved to updated information for students and learners on recognition procedures. To this end, implementation of the Council Recommendation on the **Validation of non-formal and informal learning** (22) and of the Lisbon Recognition Convention (23) needs to be enhanced to support lifelong learning for all.

3.11. The EESC welcomes the initiative of the Digital Education Action Plan 2021-27 to create a **European exchange platform for digital materials and courses**. It is essential to provide full information to users as to whether courses lead to full or partial qualifications or to micro-credentials, who validates and quality-assures the online courses, whether and how they are recognised, and how they could be added to full qualifications. It would be important to list these courses in the Europass portal and to strongly consider copyright and ownership of the online materials, as well as the quality and relevance of the online courses concerned.

3.12. **Teachers** play a central role in providing quality education and training, yet — according to the OECD — less than one in five teachers consider their profession to be valued in society (24) and the teaching profession is on average 11 % less well paid than other professionals with a tertiary level degree (25). The EEA needs to provide effective support to teachers, trainers and other educational staff to overcome the negative effects of the COVID-19 crisis.

3.13. The inclusiveness and diversity of the **European Universities** networks of institutions, students and teachers involved need to be supported throughout the countries of the Bologna Process while respecting and safeguarding national and institutional competences in higher education.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

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(22) 2012/C 398/01.
(23) The Lisbon Recognition Convention.
Opinion of the European Economic and Social Committee on ‘How to implement harmonisation of market entry for food supplements in the EU: Solutions and best practice’

(Exploratory opinion)
(2021/C 286/07)

Rapporteur: Veselin MITOV

Referral
Portuguese EU Presidency, 26.10.2020

Legal basis
Article 304 of the Treaty on the Functioning of the European Union

Section responsible
Agriculture, Rural Development and the Environment

Adopted in section
15.4.2021

Adopted at plenary
27.4.2021

Plenary session No
560

Outcome of vote
(for/against/abstentions) 245/0/5

1. Conclusions and recommendations

1.1. The food supplements market is growing in Europe. Food supplements are regulated by Directive 2002/46/EC (1), which is not applied uniformly across the EU. However, if the EU internal market is to function properly it is essential for the legislation to be applied in a uniform way to enable safe products to circulate freely.

1.2. The EESC advocates revising this legislation, in particular by updating the definition of food supplements, including a requirement of notification and scrutiny of administrative dossiers and setting up a food monitoring system that collects adverse reactions, thereby increasing protection of public health.

1.3. Product and ingredient safety must be the top requirement and should therefore be determined on a scientific basis. The EESC recommends that maximum levels be set for vitamins and minerals and that lists of authorised and unauthorised ingredients, including plants, be drawn up.

1.4. The information provided to consumers must enable them to consume the products safely. The EESC recommends that communication and consumer education measures be put in place, particularly for e-commerce.

1.5. The EESC encourages the authorities to step up monitoring, testing and surveillance of products in order to protect consumers by ordering non-compliant products to be withdrawn. This monitoring should also prevent unfair competition between operators (e.g. use of unauthorised claims, non-compliant products from third countries, in particular).

1.6. The EESC therefore calls on all the relevant parties to harmonise the regulatory framework for food supplements and its implementation, in the interests of a fairer economy and greater product safety.

2. Introduction

2.1. This opinion has been drawn up at the request of the Portuguese Council Presidency, in order to find methods and best practice for implementing harmonised market entry of food supplements within the EU. The EESC opinion could feed into the presidency’s work on this subject, in particular through a conference to be organised in the first half of the year and Council working groups. The EESC has welcomed this request, which concerns a part of the food sector which is seldom studied.

2.2. The EESC believes that this topic fits well with the World Health Organisation’s One Health approach and the EU Farm to Fork Strategy, which calls for healthy, sustainable diets and better consumer information, while ensuring fair trade between operators (\(^2\)). The EESC considers that healthy and sustainable diets represent a key ‘pillar’ of a comprehensive EU food policy, as we urgently need to orient our diets to improve — not damage — the health of both ecosystems and the public (\(^3\)).

2.3. The EESC has always been supporting an EU policy to protect health throughout the food chain, with a view to promoting safety and hygiene and clear, transparent and safe product information (\(^4\)). The Committee also maintains that food safety must continue to be based on a robust system and a European Food Safety Agency (EFSA), with transparent procedures for assessing the safety of new products entering the food chain, full traceability and appropriate risk communication (\(^5\)).

3. Towards harmonisation in the area of food supplements

3.1. A regulatory framework that needs to be improved

3.1.1. Food supplements are specifically regulated by Directive 2002/46/EC, which has hardly been amended at all since it was adopted.

3.1.2. The definition of food supplements has not changed despite innovation in the sector and new consumption patterns. It is not sufficiently precise and is subject to different interpretations. Examples include the concept of ‘measured small unit quantities’, which differs from country to country (no defined quantity). These interpretations may lead to disparities between Member States as regards the status of food supplements and the results of checks. The definition needs to be made broader and more precise.

3.1.3. The EESC proposes updating the rules in order to better harmonise the market for food supplements and to take account of new developments.

3.2. Making notification more effective

3.2.1. Notification is a possibility provided for by the directive. The declaration serves as administrative registration of products before they are placed on the market. It is not a marketing authorisation or proof of compliance or safety. Each Member State (24/27) may decide on the content of the notification and on the procedure for processing the data (ranging from simple submission of data to thorough scrutiny).

3.2.2. The information contained in the notification gives the authorities in question a better knowledge of their market, and processing the data prevents non-compliant products (national and European legislation) circulating and facilitates checks.

3.2.3. The EESC proposes better harmonisation of national systems and recommends including in the legislation the minimum information (quality and quantity of ingredients, labelling, etc.) to be provided, preferably in digital form, in order to cut red tape for the operator while ensuring the highest possible standards. If feasible, the EESC suggests setting up a European multilingual portal, with its contents left to the discretion of the Member States. Indeed, given that composition is poorly harmonised (see below), this issue can only be addressed at national level.

3.2.4. In order to protect the consumer, the EESC believes that notification should be made mandatory. This practice allows safer products to be placed on the market and also facilitates market surveillance and monitoring. The list of notified products and the related conclusions should be made available to the consumer. Consumers should not hesitate to inform themselves and to file a complaint to the control authorities in the event of the discovery of a violation.

\(^2\) OJ C 429, 11.12.2020, p. 268
\(^3\) OJ C 190, 5.6.2019, p. 9.
3.3. Setting maximum levels for nutrients — a priority for legislation

3.3.1. Vitamins and minerals are the ingredients in food supplements which are most well-known. Nutrients and their chemical forms were first regulated and listed by Regulation (EC) No 1170/2009 (6), following safety assessments carried out by the European Food Safety Authority (EFSA). Currently, maximum doses are set at national level either on the basis of the useful dose or on the basis of toxicity (7). Some countries have not set legal limits. EFSA has specified toxicity thresholds in its various opinions. These values relate to total dietary exposure (7) and cannot be extrapolated to food supplements alone.

3.3.2. The EESC recommends that the Commission swiftly instruct EFSA to set maximum amounts for nutrients in food supplements, along with purity criteria. Given the size of the European Union and different eating habits (consumption of vegetables, fish or meat, composition of tap water, etc.), a single maximum level may not be possible, but limits may be set by region/group of countries. It would also be preferable to establish limits for vulnerable sections of the population: children, pregnant women, and so on.

3.3.3. Harmonisation across the European Union would benefit all stakeholders: consumer safety would be increased and the risk of overdose reduced, and the free movement of products would benefit both operators — which could sell their products on more markets – and consumers, who would have access to a wider choice.

3.3.4. Although nutrients take priority, other ingredients used in products should also be harmonised. This would make it easier for them to circulate and enable a scientific assessment to be carried out to prove they are safe. In particular, some countries have tried to approximate their legislation on herbal products by compiling joint lists: Belgium, France and Italy, and recently Germany, Switzerland and Austria. Bioengineered ingredients such as micro-organisms (probiotics, yeast) also deserve special attention.

3.3.5. The EESC also recommends that the Commission look into compiling lists of authorised and unauthorised other substances, in terms of both identity and quantity and of conditions of use, as provided for by Regulation (EU) 2015/2283 (9) on novel foods.

3.4. Claims as a tool for consumer choice

3.4.1. Consumer information is generally provided by product labelling — list of ingredients, allergens, etc. — and is covered by Regulation (EU) No 1169/2011 (10) (11). However, labelling accounted for 58% of the infringements revealed during checks in 2018 (12). The EESC welcomes the EU’s efforts in the context of the Council’s work on food labelling, but notes that some issues remain.

3.4.2. The properties of the product are described in claims on labelling, but also in advertisements in magazines and on television or the internet, etc. Advertising can encourage people to buy certain products. Regulation (EC) No 1924/2006 (13) provided for lists of permitted nutrition and health claims. The claims regarding vitamins and minerals have already been evaluated by EFSA and published, but claims concerning botanicals and other substances have yet to be examined. These claims are therefore subject to national rules, where they exist, and the market contains all kinds of unverified claims and is thus distorted.

3.4.3. The EESC therefore calls for the Commission to find the best working option so that EFSA can continue to assess nutrition and health claims on pending substances — first and foremost claims regarding botanicals — and establish the conditions to ensure that ingredients are safe.

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(7) Judgment of the European Court of Justice, Case C-672/15.
(8) Under Article 6 of Regulation (EC) No 1925/2006 on the addition of vitamins and minerals, the Commission should have set maximum amounts for nutrients in foods (excluding food supplements) by 19 January 2009.
(11) The Council is currently discussing a roadmap, with limited impact on food supplements, on the revision of the rules on consumer information on the origin of ingredients and expiry dates.
(12) EU Food Fraud Network and Administrative Assistance and Cooperation System — 2018 Annual report.
3.5. Borderline products — products which are not without risk

3.5.1. The way food supplements are presented and advertised may also give rise to confusion as to the status of the products. Some operators do not hesitate to attribute to products therapeutic or prophylactic properties, making them substitutes for medicines and calling them ‘nutraceuticals’ (a contraction of the words ‘nutrient’ and ‘pharmaceutical’). A specific monitoring campaign revealed that such misleading claims were being used in the prevention or control of COVID-19 \(^{(14)}\). Consumers can be influenced by these false promises.

3.5.2. These products whose status is unclear \(^{(15)}\) are referred to as ‘borderline products’. The grey area is due to their place of sale, the form of the products, and the fact that certain ingredients may be used in both foods and medicines, but in different doses.

3.5.3. The EESC advises the Commission to set up a working group on borderline products, for example as part of the Standing Committee on Plants, Animals, Food and Feed (PAFF) expert group, as exists for medicines, medical devices, cosmetics and biocides. This would publish documents that help authorities and operators clarify the status of products. Creating a European working group is no hindrance to the establishment of national joint committees that would determine the status of products.

3.5.4. The EESC strongly advises the authorities to carry out specific checks on these products in order to withdraw them from the market. Their presence on the market constitutes unfair competition for pharmaceutical companies, which have to obtain marketing authorisations for medicinal products. Publishing these checks would also make consumers aware of the risks of these products.

3.6. The emergence of e-commerce — providing choice but also giving rise to inequality

3.6.1. Distance selling of food products has increased as a result of the COVID-19 pandemic. Food supplements are products which generally have a long expiry date and transporting them is simple.

3.6.2. Regrettably, the composition of a number of these products and the claims made for them — especially products from outside Europe — are not compliant, creating unfair competition for European operators which follow the rules. In addition, Member States have detected the presence of banned and dangerous substances (amphetamines in sports supplements, medicines, etc.) in certain products, making them a danger to the consumer.

3.6.3. The EESC calls on the Commission and the Member States to step up surveillance and monitoring of e-commerce platforms and websites, to carry out sampling and testing and to report non-compliant products in the Rapid Alert System for Food and Feed (RASFF).

3.6.4. The EESC also considers that communication and education of consumers and health professionals should be increased to make products purchased on the internet safer. While food must be safe to be sold, consumers should be aware that some products offered online may pose a risk to their health.

3.7. Food monitoring as a warning tool

3.7.1. Some ingredients may cause adverse reactions, even if the products comply with the legislation. Safety is not assessed for each product or ingredient, nor is how they might interact with other products such as medicines.

3.7.2. Very few Member States have an organised system for collecting adverse reactions and monitoring them (food monitoring). The countries which do have such a system are Italy, France, Denmark, Portugal, the Czech Republic, Slovenia and Croatia.

\(^{(14)}\) The results of the checks are available here.

\(^{(15)}\) According to a judgment of the European Court of Justice, the status of products falls within the remit of national authorities, and a food supplement may have different status depending on the country: Joined Cases C-211/03, C-299/03, C-316/03, C-317/03 and C-318/03.
3.7.3. The EESC encourages the introduction of national food monitoring systems to promote product safety and ensure a high level of public health protection by detecting signs early and so preventing health problems. This system should enable adverse reactions to be collected, regardless of how serious they are, in order to support product safety assessments, allow emergency measures to be taken or legislation adapted where necessary, and to enable operators to incorporate the information into their quality control and thus develop safer products. With regard to production, food supplements follow the same safety rules as other agri-food products (HACCP (16), etc.) and no specific risks for workers in the sector have been identified.

3.7.4. The EESC also suggests that a working group be set up at European level for the Member States, under the supervision of EFSA, which would allow information to be exchanged between countries, best practice to be shared with a view to uniform assessments, and scientific knowledge to be exchanged and incorporated into European legislation if necessary.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

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III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE


Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council on European data governance (Data Governance Act)’

(COM(2020) 767 final)

(2021/C 286/08)

Rapporteur: Giuseppe GUERINI
Co-rapporteur: Marinel Dănăț MUREȘAN

Referral Council of the European Union, 11.12.2020
Legal basis Article 114 of the Treaty on the Functioning of the European Union
Section responsible Single Market, Production and Consumption
Adopted in section 31.3.2021
Adopted at plenary 27.4.2021
Plenary session No 560
Outcome of vote for/against/abstentions) 234/3/13

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the proposal for a regulation on data governance, which complements and supplements Directive (EU) 2019/1024 (\(^1\)) (Open Data Directive), focusing on data subject to the rights of others that are held by public sector bodies.

1.2. The EESC believes that this initiative is appropriate and necessary given that the processing, storage and sharing of digital data are becoming increasingly important both for the economy and for social and civic reasons: individuals, administrations and businesses are subject to a complex, interlinked regulatory framework.

1.3. The EESC considers it essential to adopt a harmonised framework of rules able to inspire citizens, consumers, SMEs and, in particular, micro enterprises to trust that their data will be properly protected, in order to foster opportunities for economic operators and R & D institutes to develop.

\(^1\) OJ L 172, 26.6.2019, p. 56.
1.4. The EESC supports the Commission's objective of applying this regulation to administrations, public bodies and public law entities, taking an approach that covers all public sector actors regardless of their form.

1.5. Where data management and processing using artificial intelligence tools relate to the sphere of work, the EESC believes it is important to provide for appropriate forms of prior consultation and negotiation on their issues with the social partners. Organised civil society also has to be involved when such tools affect citizens' rights.

1.6. The EESC supports the proposal to identify national authorities responsible for ensuring appropriate oversight of the new rules.

1.7. The EESC supports the establishment of contact points in each Member State. It recommends that they be accessible to all interested parties to ensure that they operate efficiently and to encourage good cooperation with civil society organisations and social partners.

1.8. The EESC welcomes the proposal to lay down a regulation for organisations dealing with ‘altruistic data’ management, and supports the requirement for these organisations to have legal personality as not-for-profit entities and pursue objectives of general interest, autonomously and independently from other organisations pursuing for-profit data management objectives.

1.9. The EESC considers recognising the usefulness of a cooperative model for establishing data management and exchange as a way of favouring citizens and micro, small and medium-sized enterprises, self-employed workers and the professions to be a particularly interesting possibility provided for by the regulation.

1.10. The cooperative model could also be a very useful tool for neutral shared data management. To this end, the EESC encourages the Commission and the Member States to support citizens, SMEs and SME organisations in order to take initiatives to develop mutual organisations for the management and exchange of data.

1.11. The EESC believes that the protection of personal data, together with the protection of digital identity and privacy, are fundamental aspects of data governance directly linked to respect for human dignity and fundamental rights. For this reason, it considers it essential to recognise property rights for personal data in order to enable European citizens to control the way their data is used.

2. The Commission proposal

2.1. The Commission proposal examined in this opinion aims to:

i. make public sector data available for re-use, in situations where such data is subject to the rights of others;

ii. allow for sharing of data among businesses;

iii. allow personal data to be used in accordance with the GDPR;

iv. allow data use on altruistic grounds.

2.2. The proposal incorporates and complements Directive (EU) 2019/1024 on open data and the re-use of public sector information (Open Data Directive), focusing on data subject to the rights of others that are held by public sector bodies.

2.3. The proposal is based on Article 114 of the Treaty on the Functioning of the European Union. It aims to approximate the laws and administrative measures laid down by the Member States with a view to guaranteeing the flow of data in the European Union under a harmonised legislative framework able to consolidate the single market as regards the movement of data held by public bodies.
2.4. Chapter I of the regulation defines its scope, identifying:

i. the conditions for the re-use, within the EU, of certain categories of data held by public sector bodies;

ii. a notification and supervisory framework for the provision of data-sharing services;

iii. a framework for voluntary registration of entities which collect and process data made available for altruistic purposes.

2.5. Chapter II creates a mechanism for re-using certain categories of public sector data which is conditional on the respect of the rights of others. The rights of third parties may have to be safeguarded on grounds of protection of personal data or in order to protect intellectual property rights and professional confidentiality.

2.6. Member States will have to set up a single contact point supporting researchers and innovative businesses as they identify suitable data, and are required to put structures in place to support public sector bodies with suitable technical resources and legal assistance.

2.7. Chapter III aims to increase trust in sharing personal and non-personal data and to lower transaction costs linked to B2B and C2B data sharing by creating a notification regime for bodies intending to operate in the data sharing field and a set of rules on their activities. These providers will have to comply with the requirement to remain neutral as regards the data exchanged. They cannot use such data for other purposes.

2.8. Chapter IV facilitates the altruistic sharing of data voluntarily made available by individuals or companies for the common good. It establishes the possibility for organisations engaging in data altruism to register as a ‘Data Altruism Organisation recognised in the EU’ in order to increase trust in their operations.

2.9. A common European data altruism consent form will also be developed to lower the costs of collecting consent and to facilitate data portability.

2.10. Chapter V sets out the requirements for the functioning of the competent authorities designated to monitor and implement the notification framework for data-sharing service providers and entities engaged in data altruism. It also contains provisions to safeguard individuals’ rights and, particularly, on the right to lodge administrative complaints against the decisions of such bodies and on the means of judicial redress.

2.11. Chapter VI establishes the ‘European Data Innovation Board’ which will facilitate the emergence of best practices by Member States’ authorities. These best practices will focus on processing requests for the re-use of data and ensuring consistent practice regarding the notification framework for data-sharing service providers and for data altruism.

2.12. Chapter VII allows the Commission to adopt implementing acts concerning the European data altruism consent form, and Chapter VIII contains transitional provisions for the functioning of the general authorisation scheme for data-sharing providers and sets out final provisions.

3. General comments

3.1. The Commission proposal is appropriate and necessary given that the processing, storage and sharing of digital data are becoming increasingly important both for the economy and for social and civic reasons: individuals, administrations and businesses are subject to a complex, interlinked regulatory framework.

3.2. Advanced use of digital data can enable new products to be developed and conventional production processes to be made more efficient, stimulate research, combat global warming and improve use of energy and water resources, while protecting people’s health increasingly effectively.
3.3. To be used efficiently and virtuously, it must be possible to share and exchange vast quantities of data. This involves harnessing the computing power of artificial intelligence machines to process and exploit the data in the service of ever more ambitious objectives in the common interest. One example of this is exchanging data so as to promote early diagnosis of illnesses by means of medical imaging.

3.4. The sheer complexity and quantity of data being produced, extracted and transferred every second has resulted in the mushrooming of businesses, organisations and bodies specialising in managing data or acting as data intermediaries. These entities exchange data either for commercial purposes or in the general interest, pursuing the common good (primarily for scientific research).

3.5. In the current economic and technological context, data is a valuable and useful resource connected to ethical, economic and political issues, with considerable impact on competitiveness and competition not only between businesses but also between Member States. The Commission’s move to define a proportionate, clear framework for the public governance of data is therefore appropriate — a framework which aims to protect both the economic and strategic value of data in the various contexts where the ability to hold and process digital data is key.

3.6. With regard to sensitive data, particularly health data, the EESC considers it useful to design and generalise good operating practice, such as that adopted by Microsoft, for example, which has decided to warn its customers when certain government authorities have asked the company to disclose these customers’ personal data.

3.7. The EESC acknowledges and supports the Commission proposal’s primary purpose: to establish conditions which will enable individuals, consumers, self-employed workers, professionals and businesses (particularly small and micro enterprises) to share their data, confident that they will be managed by regulated, properly supervised organisations. This will boost trust and promote the formation of a regulatory framework which complies fully with the values and principles of the European Union.

3.8. The EESC points out, as it has already stated in its previous opinions, that when dealing with the issue of data governance and artificial intelligence tools, a European regulatory framework is needed to ensure transparency and traceability of algorithms, human oversight of AI tools and respect for fundamental rights.

3.9. It should also be stressed that, when these artificial intelligence tools are introduced in the workplace, the Commission must lay down rules to reinforce social dialogue and negotiation through prior consultation of workers’ representatives and must encourage the establishment of national committees/observatories on the deployment of artificial intelligence tools, involving all stakeholders: consumers, small and medium-sized businesses, professional associations and workers’ and organised civil society representatives.

3.10. It is also important for the regulation to pave the way for approving the general conditions for use of data management services, so that clauses in contracts for transfer of or access to data which breach EU protection standards can be annulled by courts. To this end, the EESC recommends harmonising and strengthening the consent principle by simplifying the procedure for accepting or refusing cookies.

4. Specific comments

4.1. The EESC considers that the Commission proposal is in line with the proportionality and subsidiarity principles enshrined in the Treaties, as it develops and proposes rules which do not go too far in sacrificing private interests to the objective of sharing and ensuring the virtuous use of data.

4.2. Therefore, a regulation which will guarantee uniform rules applicable across the board in the internal market is the most suitable instrument; a patchwork of national rules would be ineffective and result in excessive compliance costs for European businesses, especially SMEs, hindering the proper flow of data.

4.3. The regulatory instrument chosen is therefore the best suited to further the development of a European market in which data can move virtuously thanks to a harmonised regulatory framework able to inspire citizens, consumers and small and medium-sized businesses to trust that their data will be properly protected and to provide opportunities for economic operators and R & D institutes to develop and grow.
4.4. The EESC supports the Commission’s objective of applying this regulation to administrations, public bodies and public law entities, in line with standard practice for public procurement. It will thus take a facts-based approach, ensuring that the rules are comprehensive, covering all public sector actors regardless of their form, and properly upheld.

4.5. Given the general shape of the new rules, the proposed regulation is both proportionate and consistent that public undertakings be exempt from them, since these bodies increasingly use entrepreneurial and market-based models.

4.6. The EESC supports the provisions set out in Article 6, whereby ‘[p]ublic sector bodies which allow re-use of the categories of data referred to in Article 3(1) may charge fees for allowing the re-use of such data’ and ‘[a]ny fees shall be non-discriminatory, proportionate and objectively justified and shall not restrict competition’. In this regard, it should be pointed out that businesses, SMEs, micro and small organisations and social economy organisations provide authorities with a substantial amount of data, sometimes at considerable cost, and the impact of this on SMEs, in particular, should be taken into account when tariffs are set.

4.7. The EESC also endorses the provision whereby the methodology for calculating fees must be published in advance and be based on the costs of managing and sharing the data, rather than on some other cost-setting system along the lines of a data licence.

4.8. The EESC flags up the need to ensure that data exchanges comply with the provisions of Article 101 TFEU as regards distortion of competition. It will be important to ensure compliance with the Commission’s guidelines on horizontal cooperative agreements in the form of the exchange of information. This will avoid situations whereby bodies which exchange information distort market transparency, opening the door to collusion between direct competitors and diminished competition, to the detriment of consumers and small and micro enterprises and thus distorting proper market competition.

4.9. The EESC is very much in favour of identifying national authorities (Articles 12 and 20) responsible for ensuring appropriate oversight regarding the enforceability of the new rules established by the Commission. It endorses the list of requirements to be fulfilled by these authorities, as set out in Article 23.

4.10. In order to prevent inappropriate use of databases at national or European level, supervision of the use of data should be carried out by the various national authorities involved, working together and with the European Commission.

4.11. With regard to altruistic data organisations and the general conditions for recognising them, the Committee welcomes the proposal’s stipulation that these organisations should be legal entities operating on a not-for-profit basis and in the general interest, and above all that they should be autonomous and independent, particularly from other organisations pursuing commercial or for-profit data management objectives.

4.12. Such provisos and the establishment of a public register of altruistic data organisations would meet the need to ensure transparency and protect the rights and interests of the individuals and businesses which are the object of the altruistic exchange of data. This would increase the trust of all parties involved.

4.13. The EESC firmly believes it is useful for a contact point to be set up in each Member State, as provided for in Article 8 of the proposal. This contact point must be highly accessible to all interested parties to ensure that it operates efficiently and to encourage good cooperation with civil society organisations and social partners.

4.14. The EESC also welcomes the fact that Chapter III of the regulation raises the possibility of establishing cooperatives to manage and exchange data. This mechanism would serve the interests of people (workers, consumers, entrepreneurs) and small and one-person companies which would not be in a position to access or process large amounts of data on their own. In this connection, the EESC encourages the Commission and the Member States to support SME organisations in order to take collective initiatives to develop mutual organisations of this kind for the management and exchange of data.
4.15. Cooperatives and other structures based on cooperation would indeed seem particularly well suited for managing intermediary activities and data exchange or sharing between citizens (workers, consumers, entrepreneurs) and companies. Cooperatives in particular would enable the data management interests of the data subjects and the cooperative data holder — which in this case would be owned by the same data subjects — to coincide, and thus such structures would allow for participatory governance shared between citizens, companies and entrepreneurs which both provide and use the data. This mechanism could support the climate of trust and openness which is a prerequisite for good data governance in the EU’s single digital market.

4.16. In this regard, the EESC believes that effective cooperation is needed with civil society organisations, social partners and professional organisations.

4.17. With regard to the protection of personal data, the EESC points out that European law considers the protection of privacy and respect for human dignity to be a vital part of the fundamental and inviolable rights of individuals. However, sometimes the proper protection of these rights is threatened by misuse of data collected with consent that has been freely given but not always sought through simple enough procedures. There are also more serious cases where data is misappropriated with real identity theft. In some Member States courts of justice have repeatedly condemned data theft. Recognising theft means recognising the right to ownership of the data.

4.18. The EESC therefore recommends recognising European property rights on digital data in order to enable people (workers, consumers, entrepreneurs) to control and manage the use of their data or prohibit their use. This would open the door to collective actions with clear legal legitimacy which aim to prevent or control access to people’s data and to facilitate the management of those data in order to create the European digital market.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
ANNEX

The following section opinion text was rejected in favour of an amendment adopted by the assembly, but obtained at least one quarter of the votes cast:

1.6. The EESC supports the proposal to identify national authorities responsible for ensuring appropriate oversight of the new rules. In this regard, it points out that the authorities responsible for safeguarding personal data which are already in place in the Member States could be responsible for implementing the rules referred to in the Commission’s proposal, drawing on their expertise, without new authorities being created.

4.9. The EESC is very much in favour of identifying national authorities (Articles 12 and 20) responsible for ensuring appropriate oversight regarding the enforceability of the new rules established by the Commission. It endorses the list of requirements to be fulfilled by these authorities, as set out in Article 23. On this point, and without prejudice to Member States’ discretion in terms of organisation, the EESC points out that the authorities responsible for safeguarding personal data, which are already operational, have considerable technical and regulatory expertise in this field. They could therefore implement the rules covered by the Commission’s proposal themselves, without new authorities being created.

Outcome of the vote:
Votes in favour of deleting the text: 124
Against: 94
Abstentions: 27
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament and the Council — New Consumer Agenda Strengthening Consumer Resilience for a Sustainable Recovery’

(COM(2020) 696 final)

(2021/C 286/09)

Rapporteur: Bernardo HERNÁNDEZ BATALLER
Co-rapporteur: Gonçalo LOBO XAVIER

Referral
Commission, 14.1.2021

Legal basis
Article 304 of the Treaty on the Functioning of the European Union

Section responsible
Single Market, Production and Consumption

Adoption in section
31.3.2021

Adoption in plenary
27.4.2021

Plenary session No
560

Outcome of vote
(for/against/abstentions) 218/2/24

1. Conclusions and recommendations

1.1 The EESC takes note of the New Consumer Agenda and the 22 actions proposed therein and is of the view that it could not have been any more comprehensive or detailed.

1.2 However, while recognising the effort made by the Commission, the EESC believes that a Consumer Agenda should arise as a corollary or natural progression from a genuine consumer policy strategy. As the Commission’s most recent Consumer Policy Strategy dates back to 13 March 2007 (for the period 2007-2013), it is now completely outdated.

1.3 The EESC therefore fears that, as it is structured, the New Consumer Agenda may be seen as a list of separate initiatives that will be difficult to implement on the ground.

1.4 The EESC considers that the measures to tackle the COVID-19 pandemic must be exceptional and that many of them need to be prioritised as urgent to address an unprecedented joint health, economic and social crisis. It questions whether such measures ought to be included in a consumer agenda, which, moreover, the EESC believes addresses the current difficult situation inadequately.

1.5 In this context, the EESC reiterates that the Health Union must be deepened as much as possible and that health policy is not exclusively a Member State policy. Article 168 TFEU should be amended in due time to align it more closely with Article 169 on consumer policy.

1.6 The EESC calls for physical and digital completion of the internal market to be on an equal footing and for a high level of consumer protection to be achieved, as, moreover, the Committee has insisted on several occasions. For this reason, it agrees that a cross-cutting approach is needed, integrated with other EU policies, so that consumer interests are factored into the design and implementation of sectoral policies.

1.7 The EESC considers the environmental component of the Agenda to be essential and stresses that it supported the European Green Deal. In particular, the EESC calls for greater durability of goods, access to sustainable products, a clean, circular, more climate-friendly economy and efficient use of products, as well as combating of planned obsolescence and the right to repair goods and products.
1.8 The EESC is, however, aware that the work needed to measure carbon footprints has to take into account the life cycle of products and is not easy to carry out.

1.9 Consumer protection rules need to be adapted to the digital world. The new challenges posed by emerging technologies such as artificial intelligence (AI), the Internet of Things (IoT) and robotics call for greater protection than is currently afforded and must be tackled, particularly in the revision of the Product Safety Directive, and gaps in the existing legislation need to be identified and filled. This is also why the Digital Services Regulation (DSR) and the Digital Markets Regulation (DMA) will be essential to complement this strategy.

1.10 The EESC demands that European support also be reflected in the involvement of all civil society organisations (especially consumer organisations), because of their role in the development of the Agenda. Organised civil society, in particular consumer organisations and business representatives, along with other social partners, must build a mutually beneficial relationship to ensure broader participation in the formulation and implementation of this policy.

1.11 Consequently, the role of consumer education and training should be increased and strengthened under the Agenda, as they help to consolidate a high level of protection.

1.12 The EESC is aware of SMEs’ difficulties in contributing to the success of the Agenda, in particular in terms of consumer awareness and information and providing sustainable but higher value goods and services.

1.13 The EESC draws attention to the need to provide businesses, especially SMEs, with the financial resources to meet the requirements of the Agenda, especially at a time when fighting the COVID-19 crisis has reduced business investment in the digital and environment sectors.

2. The Commission communication

2.1 General remarks

2.1.1 The Commission’s communication:

— aims to strengthen the overall framework for cooperation between the EU institutions, Member States and stakeholders;

— takes a holistic approach covering various Union policies;

— reflects the need to take consumer protection requirements into account when formulating and implementing other policies, and complements other EU initiatives;

— calls for close cooperation between the EU and its Member States, and transposition, implementation and enforcement of the consumer protection framework developed through secondary EU legislation.

2.1.2 The communication refers to 22 actions covering five main priority areas:

— the green transition;

— the digital transformation;

— protection and respect for consumer rights;

— specific needs of certain consumer groups; and

— international cooperation.

2.1.3 The communication addresses the problems, considering it important for everyone to have equal and timely access to affordable tests needed, protective equipment, treatment and future vaccines providing the consumer with every guarantee with regard to fundamental rights, medical ethics, privacy and data protection in accordance with the General Data Protection Regulation.
2.1.4 The social and economic disruption linked to the pandemic present a challenge to society. While it is important to ensure a high level of consumer protection, there are still some ongoing challenges, such as:

— implementing the legislation on the right to a full refund of pre-payments to tour operators;

— the rise in consumer scams, misleading marketing techniques and fraud in online shopping;

— changing consumption patterns such as the increase in single-use packaging waste.

2.2 Key priority areas

2.2.1 Green transition: contributing to climate neutrality, preserving natural resources and biodiversity and reducing water, air and soil pollution. Sustainable products must be available to all.

2.2.2 The European Green Deal sets out a comprehensive strategy to transform the EU into a fair and prosperous society, with a climate-neutral, resource-efficient, clean and circular economy in which our environmental footprint is reduced.

2.2.3 The Sale of Goods Directive should be amended to promote repair and make it an effective right in practice. Additional measures to deal with specific groups of goods and services are envisaged.

2.2.4 Consumers should be better protected against false information or information presented in a confusing or misleading way to create the impression that a product or a company is more environmentally-sound than it really is ('greenwashing').

2.3 The digital transformation

2.3.1 The Directive on Better Enforcement and Modernisation of Consumer Law and the Digital Content Directive are important steps, although additional measures are needed given the fast pace of technological progress.

2.3.2 The use of 'dark' patterns, certain personalisation practices based on profiling, hidden advertising, fraud, false or misleading information and manipulated consumer reviews must be prevented. Further guidance is also needed to accompany the Unfair Commercial Practices Directive and the Consumer Rights Directive, as consumers should benefit from a comparable level of protection and fairness online and offline.

2.3.3 Artificial intelligence (AI) does offer benefits but some AI uses could breach consumer rights and cause harm to consumers. The EESC stresses that, under Article 22 of the GDPR, data subjects have the right to human intervention when a decision based on automated processing significantly affects them.

2.3.4 The new Consumer Protection Cooperation (CPC) Regulation strengthens the competent authorities' online capacity, cooperation mechanisms and intelligence gathering system, with a view to addressing large-scale infringements of EU consumer protection law, ensuring a consistent level of consumer protection and providing a one-stop-shop for businesses.

2.4 Addressing specific consumer needs

2.4.1 It is assumed that consumers are generally the weaker party in a transaction and their interests therefore require protection. However, certain groups of consumers may be particularly vulnerable and need specific safeguards. Their vulnerability may be due to social circumstances or to particular characteristics such as age, gender, state of health, digital literacy, numeracy or their financial situation.
2.4.2 The increased financial vulnerability of many households in the EU is particularly worrying at present.

2.4.3 The review would also aim to prevent discriminatory situations as regards access to credit.

2.4.3.1 Older people and persons with disabilities have specific consumption-related needs, and it is important to ensure that clear, accessible and user-friendly information is available online and offline, in line with the accessibility requirements for products and services.

2.4.3.2 A fair, non-discriminatory approach to the digital transition should address the needs of older consumers and consumers with disabilities, and, more generally, ‘offliners’, who may feel less at ease with digital tools.

2.4.3.3 Children and minors are particularly exposed to misleading or aggressive commercial practices online and solutions need to be found to this. In addition, children must be protected from existing unsafe products and from risks related to the products, so the safety requirements for standards on some products for children will be updated.

2.4.3.4 The risk of discrimination is at times exacerbated by algorithms used by some goods and services providers, which may be formulated with biases often resulting from pre-existing cultural or social expectations.

2.5 Consumer protection in a global context

2.5.1 It is important for the EU to project its high level of consumer protection at international level, as a European value and model.

2.5.2 Ensuring the safety of imports and protecting EU consumers from unfair commercial practices used by non-EU operators requires enhanced action within the EU, involving stronger market surveillance tools and closer cooperation with authorities in EU partner countries.

2.5.3 Multilateral cooperation on consumer issues is essential to promote a high level of international protection and safety and to protect consumers at global level.

2.6 Governance

2.6.1 The Agenda sets out actions to foster consumer policy priorities that could be pursued by the EU and its Member States in the next five years.

2.6.2 This new vision of cooperation between the EU and national policy priorities requires a new framework for enhanced cooperation capable of delivering concrete actions.

2.6.3 The Commission will try to hold regular discussions with the EP, the EESC and the CoR, and it will work closely with national authorities to ensure close coordination of actions and best use of available funds.

2.6.4 This should be accompanied by effective, close cooperation with key stakeholders, including consumer organisations, industry and academics. Robust EU and national consumer organisations are essential partners in planning the work under this Agenda and in reaching consumers.

2.6.5 The Commission will therefore:

— set up a new Consumer Policy Advisory Group;

— revamp the Consumer Conditions Scoreboard in 2021.

3. General comments

3.1 With regard to the health crisis, the EESC encourages the Commission and the Member States to continue their efforts to vaccinate people and to make the European vaccine strategy socially and financially accessible to all citizens.
3.2 It is important to empower consumers and involve them in the economy and to make them key players in a sustainable recovery, thus making the EU economy and the single market more competitive. New business models that can optimise the efficiency and sustainability of goods and services are important.

3.3 Consumers should be key players in the green transition, promoting sustainable production and consumption. All products should be safe, available, affordable and accessible, in particular when it comes to promoting product shelf life, durability, reparability and recyclability. The EESC has already expressed its support for the ‘planned obsolescence’ regulation and for extending product lifespans, including for software. The proposed measures are generally cross-cutting and not specific to consumer protection.

3.4 SMEs should be involved in this green transition without the administrative burden increasing significantly.

3.5 The EESC is committed to working actively towards a green transition and digital transformation, without inducing social exclusion, avoiding a two-speed system for vulnerable consumers and discriminatory situations restricting choice and access to goods and services, such as denying access to credit services to pregnant women on basis of a possible loss of income and excluding single mothers from certain financial services.

3.6 Support measures should be taken to address the financial vulnerability of families, including single parents and same-sex spouses, especially with regard to debt. The EESC has repeatedly expressed its support for the regulation of household over-indebtedness in its opinions.

3.7 As regards cross-cutting measures, the Commission should act in the field of energy poverty and avoid situations that could lead to social exclusion.

3.8 The EESC calls on the Commission to review the directives on product safety, consumer credit, distance marketing of financial services, consumer rights and unfair marketing practices as soon as possible.

3.9 The EESC has high expectations regarding the Directive on representative actions for the protection of the collective interests of consumers, and calls for the directive to be transposed in a way that is consistent with the legal frameworks of the Member States.

3.10 The EESC agrees with the objective of empowering consumers to play a more active role in the green transition. It is not enough for businesses to make changes and innovate, the market needs to accept these changes and be transformed in order for the economy to operate in a more circular manner: consuming more sustainable products (likely to be more expensive), more durable, repairable products following the desired eco-design (products developed on the basis of green criteria) and more efficient use of natural resources. The role of transport in the green transition should also be considered.

3.11 We must convey the message that making a commitment to the environment is everyone’s responsibility. This includes businesses implementing more sustainable measures and practices and informing and training consumers, and, to ensure that such measures are effective, consumers also adopting sustainable habits and behaviour. As regards the additional costs that European SMEs may incur, measured as part of the SME Test impact assessment (an integral part of the Small Business Act for Europe initiative), these should also be mitigated under this mechanism, which also includes ongoing consultation of SME representatives. Mechanisms and resources will need to be put in place to enable SMEs to update and renew their knowledge.

3.12 The EESC considers it important to step up the fight against unfair commercial practices that infringe the rights of consumers and all other operators involved in the product cycle. The Committee argues that everything considered abusive in the physical world (offline) should be treated in the same way in the digital world (online). New types of abuse in the offline world, such as business surveillance strategies and ‘dark patterns’, require even greater forms of protection to be developed.
3.13 It is important to bolster IT, human and other resources providing support in the fight against digital fraud, which — due to its scale and dispersed nature — is much more complex for the authorities to tackle, including in cases where public health comes under attack (e.g. online purchasing of illegal medicines).

3.14 Actions 8, 9 and 10 must safeguard the balance between safety and the flexibility needed to ensure that innovation and technological and economic progress are not held back. It is important to develop an action plan with China on product safety and to boost capacity-building support to EU partner countries, including those in Africa, in relation to regulation and technical support. The authenticity of products must be protected (as well as trademarks) as it has been recognised that there are large quantities of counterfeit and forged products in certain third countries. For reasons of quality recognition, convenience and reputation, the original products deserve significant attention and interest from consumers.

3.15 The EESC calls for a method for assessing quantity and quality to be adopted. It is important to assess whether the EU directives are implemented in a timely manner, in line with secondary legislation and with better regulation principles.

3.16 The EESC notes a widening gap between the strategies (e.g., EGD in general and 'Farm to Fork' or the New Consumer Agenda in particular) and the more detailed regulatory (or non-regulatory) initiatives that are supposed to roll those strategies out. The Committee underlines the need for ambitions of the Consumer Agenda on the implementation of the EGD objectives to be constant all over the rollout of its individual follow-up initiatives.

4. The COVID-19 crisis

4.1 The current pandemic crisis has hit everyone hard, affecting many areas of life considerably. It has led to a shift in Member States’ main priorities and penalised consumers enormously, as their rights have been unduly restricted, without existing mechanisms having been strengthened or, moreover, mechanisms for tackling new situations having been put in place so as to guarantee consumers’ financial protection.

4.2 It is therefore essential, in order to anticipate any impact on consumers and drawing on the lessons learned from the pandemic crisis, to seek to strengthen consumer protection in the future in the areas of health services, energy, communications, financial services, aviation and passenger rights, package travel, surveillance, food and digital services.

4.3 At the same time, the crisis spawned a plethora of unfair commercial practices targeting the most vulnerable. For a certain period, it not only led to shortages in certain personal protective items and equipment but also to very high, speculative prices. Once again, and in anticipation of a further upsurge in the crisis, this situation will require attention and increased resources for supervisory bodies.

4.4 The EESC will encourage the adoption of an own-initiative opinion on this matter to assist the Commission in defining and implementing these measures.

5. Other areas not included in the New Consumer Agenda or addressed indirectly and which should be covered

5.1 Public health management in the Member States

The first steps towards the creation of the European Health Union are being taken. The coronavirus crisis has shown that the EU needs to play a much greater role in the area of public health, to protect the health of all European citizens with more resilient health systems, building a stronger and more robust health safety framework.

5.2 Financial services

As part of the revision of the Directive on consumer credit, it will be crucial to highlight the moratorium mechanism and the creation of an integrated approach that safeguards the interests of consumers regardless of the nature of the credit involved. At European level, it will be important to evaluate the insolvency mechanism for individuals, taking into account the need to avoid reducing the current level of consumer protection.
5.3 **Tourism, leisure and air passenger rights**

It is important to create, strengthen and amend consumers’ rights and to set up European funds to protect consumer interests in these areas. This will also be the best opportunity to review consumer protection and secure a proper financial protection scheme to protect passengers against the danger of a liquidity crisis or, in the event of airline bankruptcy, as regards reimbursement of tickets and, if necessary, repatriation.

5.4 **Housing**

There is a need to create an integrated European housing programme involving different areas, such as environment, energy, financial services, contractual rights and health, with a view to creating a right for European consumers to have access to decent, accessible housing over the long term. The construction of sustainable houses (such as ‘passive houses’) must be encouraged. Applying circularity principles to building renovation will reduce materials-related greenhouse gas emissions for buildings. Building renovation can open up many possibilities and generate far-reaching social, environmental and economic benefits.

5.5 **Energy**

Consumer rights should be strengthened when implementing policies on renewable energy, self-consumption and market tariffs, guaranteeing that no consumer is discriminated against or suffers from a lack of connectivity as real alternative energy solutions are introduced.

5.6 **Digital platforms**

Digital platforms must be better defined and their accountability increased, both for product safety purposes and for the purposes of liability in brokering online contracts.

5.7 **Energy**

It is important to establish a clear liability structure for online platforms, including appropriate measures to deal with fraudulent, unfair and misleading commercial practices and the sale of non-compliant products and dangerous goods and services on online platforms. In this regard, it is important to strengthen cooperation between the Commission and national authorities in order to combat these kinds of dishonest practices.

5.8 **The direct sale of products which are dangerous to consumers**

The direct sale of products which are dangerous to consumers, mainly because of their chemical composition, should be suspended or limited. The EESC welcomes the introduction of the Safety Gate system, an EU rapid alert system for unsafe consumer products.

5.9 **Protection**

Protection must be enhanced for over-the-top services, as this is still not covered by most national laws and has not been addressed by the European Electronic Communications Code.

5.10 **By developing consumer protection policy, the EU will increase its economic, social and territorial cohesion**

Within its overall policy design, it should implement a number of measures and programmes closer to the people. To this end it will need to strengthen the European Consumer Centres (ECC) network and the Consumer Protection Cooperation network, involving all national authorities.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
The following amendment was rejected by the Assembly, although at least one quarter of the votes cast were in favour of adopting it (Rule 39(3) of the Rules of Procedure):

**Point 1.13**

Delete:

1.13 The EESC draws attention to the need to provide businesses, especially SMEs, with the financial resources to meet the requirements of the Agenda, especially at a time when fighting the COVID-19 crisis has reduced business investment in the digital and environment sectors.

**Reason:**

From the current formula in the paragraph, it appears that public sector support should be provided to make businesses fulfil basic consumer protections. It goes without saying that such plans go way too far in the profit-making-based economic system and contradicts basic functioning requirements of such a system. Consumer protection is a must, not a luxury or an option to be provided by paying for it with public money.

**Vote:**

For: 64
Against: 139
Abstentions: 35
1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes, first and foremost, the European Commission's intention to ensure the supply of safe, high quality and affordable medicines and the financial sustainability of Member States' health systems through the new Pharmaceutical Strategy for Europe, alongside promoting the competitiveness of the pharmaceutical industry. New common European approaches play a key role in the following areas in particular:

— access to and availability of medicines;

— affordability and financial sustainability of national health systems;

— promotion of research and innovation in order to strengthen the competitiveness of the European pharmaceutical industry;

— strengthening of resilient and transparent supply and production chains;

— efficient implementation of the objectives of the Green Deal (1) by a climate-neutral pharmaceutical industry.

1.2. The current COVID-19 pandemic is highlighting the importance of a coordinated European approach. The EESC would therefore draw attention to the importance of common strategies for pharmaceutical research and development and pricing, particularly where high-risk products are concerned and where the return on investment for manufacturers is not guaranteed.

1.3. The EESC stresses that any policy measures at EU level must ensure respect for Member States' competences and the subsidiarity principle in accordance with Article 168(7) TFEU, in order to take account of the fact that national health systems are not organised in a uniform way and so as not to destabilise them financially. This is particularly important when it comes to matters of pricing and reimbursement, which are solely the responsibility of Member States. It is nonetheless important to ensure that information, knowledge and best practices are continuously shared at EU level in order to avoid any fragmentation or inequalities.

1.4. The EESC notes that, under the current framework conditions, the European pharmaceutical sector has in recent years evolved in a direction that has led in part to misuse of the various incentive schemes, that lacks transparency in many respects and that has resulted in a concentration on business areas with high profit margins and in some cases excessive price demands. The EESC therefore feels that there is an urgent need to revise and adapt the current regulatory framework for medicines and to link it more closely to conditionalities relating to affordability and availability.

1.5. The EESC stresses in particular the central role of a functioning, fair and efficient internal market, which, on the one hand, promotes and rewards genuine medical innovation with real added value for healthcare and, on the other, strengthens competition for fair and affordable access to medicines.

1.6. With a view to promoting innovative research and development (R & D) as a basis for the global competitiveness of the European pharmaceutical industry, the EESC particularly supports the idea of harmonising the legal framework for the protection of intellectual property and its consistent application in the Member States.

1.7. As regards boosting the resilience of supply and production chains as a way of strengthening Europe’s strategic autonomy and avoiding supply shortages, the EESC advocates a balanced approach between increasing the diversification of production sites and a progressive/gradual, partial, but — at the same time — sustainable, reshoring of production to Europe. Possible financial and tax incentives at Member State level and the efficiency thereof should be discussed and analysed jointly at EU level.

1.8. The EESC also welcomes the planned revision of the European incentive system for pharmaceutical R & D in Europe, particularly the legal framework for paediatric medicines and medicines for rare diseases. In particular, the considerable unmet need for suitable therapies for paediatric cancer must be a priority in future strategies.

1.9. The EESC believes that the revision of the regulatory framework for medicines and any future initiatives at EU level must be based primarily on the principle of transparency in order to generate real added value for the public good. This concerns not only costs for manufacturers, but also public funding for R & D, take-up of incentives, etc.

1.10. The EESC welcomes and supports initiatives by the Member States, supported by the European Commission, to jointly procure innovative and high-priced medicines in order to ensure the financial sustainability of national health systems.

1.11. The EESC recognises the positive role of generics and biosimilars in terms of access to affordable medicines, their importance for the sustainable financing of health systems and their contribution to a resilient, strategically independent European pharmaceutical market. The EESC supports measures, for example in the context of public procurement, through the application of MEAT (most economically advantageous tender) criteria and multi-winner tenders, taking environmental and social protection aspects into account, that lead to a sustainable market for generics and biosimilar medicines.

1.12. The EESC appeals for caution when it comes to accelerated authorisations based on insufficient evidence and increased use of real world data, except in the case of a cross-border health crisis. It is essential to prevent a shifting of risk, to the detriment of patients, from the pre- to the post-market authorisation phases. Data and study results should therefore be consistently published in order to ensure effective post-market authorisation monitoring.
2. General comments

2.1. According to the Health at a Glance: Europe report (1) published on 18 November 2020, health expenditure in all 27 EU Member States grew by an average of 3% per year between 2013 and 2019, reaching 8.3% of GDP in 2019. Although this share has evolved in line with economic growth in the Member States, a sharp increase can be expected in the context of the current COVID-19 pandemic.

2.2. As already stressed in the 2016 Council Conclusions (2) and the European Parliament’s own-initiative report on options to improve access to medicines (3), the rising prices of medicines are putting increasing pressure on national health systems. The balance in the complex pharmaceutical system between authorisation and measures to promote innovation must therefore be restored in the EU in order to ensure equal access to medicines in all Member States.

2.3. In particular, rising prices for newly authorised therapies threaten the stability of the pharmaceutical budget and thus patients’ access to medicines (4). Here the EESC is particularly critical of strong clustering (e.g. in the field of cancer) around areas that are already well researched and which largely coincide with manufacturers’ existing portfolios. In future, it will therefore be necessary to find effective ways to break up this clustering; therapies should be affordable and as a result equally accessible to all patients. To this end, R & D needs to be channelled towards areas with real unmet medical needs, such as rare diseases or paediatric cancers.

2.4. The European Intellectual Property Action Plan Roadmap (5) already stresses that the Union has a strong legal framework for protecting intellectual property. Any change to this system should therefore be accompanied by a robust impact assessment in order to make only necessary changes.

2.4.1. Patents, supplementary protection certificates (SPCs) and data exclusivity aim to incentivise research in new areas. The development of the Pharmaceutical Strategy must be guided by its added value for society. The key focus should be on access to and availability of effective, safe and affordable medicines for the benefit of all patients, in keeping with the right to adequate healthcare, as set out in the European Pillar of Social Rights (6). This relates not only to the supply of innovative new patented medicines, but equally to access to generics and biosimilars. A functioning and fair internal market therefore plays a central role.

2.4.2. The EESC also supports the harmonisation of the legal framework on SPCs in order to make the granting procedure more coherent and eliminate fragmented application in the Member States. Given the social impact of SPCs, it is important to ensure that the central authority to be set up in this connection comes under the authority of EU institutions.

2.4.3. The EESC is very concerned about a possible extension of exclusive rights and a further strengthening of intellectual property rights with regard to the pharmaceutical market. In order to maintain patients’ access to affordable therapies, the development and market launch of generics and biosimilars should not make price competition more difficult. It is therefore important to avoid multiple protection of a product in the different Member States or through several patents (patent slicing), especially since there is no evidence that strong intellectual property protection promotes innovation and productivity (7).

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(1) https://ec.europa.eu/health/state/glance_en
(2) OJ C 269, 23.7.2016, p. 31.
(5) https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12510-Intellectual-Property-Action-Plan
(7) https://pubs.aea web.org/doi/pdf/10.1257/jep.27.1.3
2.4.4. Particularly in the context of the current political debate on the reshorining of production sites to Europe in order to secure supply, a detailed analysis of a change to the legal framework on intellectual property needs to be carried out. According to the impact assessment of what is called the Falsified Medicines Directive (2011/62/EU) (9), the vast majority of active pharmaceutical ingredients (API) for generics are sourced in India and China, whereas the API of new patented medicines are mostly produced in Europe. Accordingly, incentives and mechanisms other than further strengthening intellectual property rights would have to be put in place to reshorine production of generics in particular. Alternative measures could be, for example, licensing agreements, advance purchase agreements or what are known as patent pools for medicines (10). At the same time as reshorining, ways should also be found to further diversify production both inside and outside Europe in order to strengthen and secure supply chains.

2.5. In the field of orphan medicinal products (OMPs), the EESC welcomes the fact that the incentives set out in Regulation (EC) No 141/2000 (11) have steadily increased the number of approved OMPs, which has significantly improved equal access for patients and is therefore to be welcomed. However, access is increasingly being undermined by high price demands from manufacturers (12). The EESC therefore stresses that OMP status should not be used for unreasonable price demands and profits and therefore supports the revision of this legal framework launched by the impact assessment (13) published in November 2020. Consideration should be given to a regular automatic re-evaluation of the criteria and an adjustment of the duration of market exclusivity under certain conditions still to be defined. The EESC also supports a possible revision of the criteria, in particular prevalence (taking into account all authorised indications), as regards designation as an OMP.

2.6. The EESC particularly supports the European Commission’s call, as well as that of many MEPs, for greater transparency across the pharmaceutical sector as a whole, particularly with regard to R & D costs. In the absence in most cases of basic rules on cost transparency in the development of medicines, the competent pricing and reimbursement authorities are unable to verify whether the pricing of new medicines, and thus the reasonableness of the prices charged, is justified by high research costs.

2.6.1. According to the EESC, the Transparency Directive 89/105/EEC (14) could be an important instrument in this context. Article 6 of that directive provides that Member States which have a positive list must publish a complete list of products covered by their health insurance system and the prices set by their competent authorities and communicate them to the Commission. However, the actual prices paid are protected by confidential purchasing agreements, which makes exchanges between national authorities considerably more difficult. The EURIPID database (15) could serve as a starting point in this context, provided that all Member States are required to register their price information.

2.6.2. The EESC also considers it essential to significantly increase transparency in respect of global pharmaceutical supply and production chains in order to address possible supply shortages and strengthen the resilience of health systems. In addition to putting in place a coordinated reporting system, as already provided for under the European Health Union, with the mandatory participation of all relevant stakeholders, it is also vital here to introduce strategic stockpiling of medicines designated as essential by the WHO.

(10) https://www.who.int/bulletin/volumes/97/8/18-229179/en/
(15) EURIPID is a voluntary database for national authorities responsible for pricing and reimbursement issues. It contains data — in line with the Transparency Directive 89/105/EEC — on official prices of mainly out-patient medicinal products. See https://www.euripid.eu/about
2.6.3. In the context of the current COVID-19 pandemic, the EESC backs the call of many MEPs and relevant stakeholders for more transparency on the advance purchase agreements with pharmaceutical manufacturers for COVID-19 vaccines. Transparency is key to trust and acceptance by EU citizens in immunisation against the virus. This should not only apply to the current vaccine contracts, but should also serve as a new transparency framework for any future joint procurement measures.

2.7. As regards measures to jointly procure newly authorised high-priced medicines, these should be explicitly strengthened and promoted at European level. In addition to increased security of supply in Europe, this can also strengthen the negotiating position vis-à-vis pharmaceutical manufacturers and achieve clear cost reductions through larger volumes of purchases.

2.8. With regard to the promotion of pharmaceutical R & D, the EESC agrees with the criticism levelled by many actors and stakeholders regarding the lack of transparency, the lack of involvement of public stakeholders and the lack of public access to research results.

2.8.1. The EESC therefore calls for all public funding for research and R & D costs to be made public in future in order to be able to take this into account when it comes to national pricing issues and to ensure a true public return on public investment. Consideration should be given here to regular evaluation of research funding and a report to the European Parliament. Especially in sensitive areas of healthcare, the mere alignment of research funding with industrial interests is detrimental. All relevant stakeholders must therefore be closely involved in the European Commission's research agendas in future in order to ensure they are aligned with actual medical and social needs.

2.8.2. In this context, it is essential to set a common EU-wide definition of unmet medical need (UMN) in order to efficiently channel pharmaceutical R & D activities to those areas where no adequate or effective therapy exists. These criteria should be based on patients' needs and on public health.

2.9. At the same time, in the context of medical R & D and clinical studies, the EESC calls for action at EU level to take more account of gender differences and the different effects of medicinal products in everyday medicine, based on corresponding relevant indicators. It also calls for more transparency and thus for greater stakeholder awareness in this connection.

2.10. In the EESC's view, it is especially positive that the growing threat of antimicrobial resistance (AMR) is explicitly highlighted in the Pharmaceutical Strategy. In addition to effective measures to reduce the use of antibiotics, the focus must in particular be on alternative incentive models throughout the R & D cycle, as well as on new pricing models. Proven incentives, such as early dialogue with the European Medicines Agency (EMA) and the fee waiver, can also be used here. It will be important in the future to decouple manufacturers' profits from sales volumes. However, in parallel with the promotion of new antibiotics, other measures, such as advance purchase agreements, could also be taken to provide manufacturers with more predictability.

2.11. With regard to authorisation and market entry issues, the EESC generally welcomes the rapid availability of innovative medicines, especially in areas with a high UMN. However, faster authorisations do not automatically guarantee a better supply of medicines. The primary objective of European pharmaceutical policy must therefore be equal access to safe, affordable and high-quality medicines for all patients.

2.11.1. The EESC agrees with the European Commission that randomised controlled studies with (ideally) relevant comparators and endpoints must continue to be considered the gold standard for market authorisation, given the rapidly evolving technological possibilities and the accompanying call for flexible study designs. Exceptions should only be made in
individual cases, giving the reasons for doing so. If data generation is transferred to the post-market authorisation phase, steps must be taken to ensure that the associated costs are not shifted from pharmaceutical companies to the public sector, and that patients' safety is not jeopardised by premature authorisations. The fact that there is insufficient data, and that further data is therefore needed, should be taken into account in pricing.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Making the most of the EU’s innovative potential — An intellectual property action plan to support the EU’s recovery and resilience’

(COM(2020) 760 final)

(2021/C 286/11)

Rapporteur: Rudolf KOLBE

1. Conclusions and recommendations

1.1. The EESC fully supports the European Commission’s action plan on intellectual property (IP) as a very good and holistic approach to modernising the EU IP system.

1.2. The EESC strongly believes that launching the Unitary Patent System needs to be a main priority and will considerably enhance the competitiveness of EU companies. Given the obvious difficulties in implementing the system, the EESC is convinced that transferring the UPS to the EU legislative system needs to become the (long-term) goal.

1.3. The EESC stresses the importance of SME support measures in all areas of intellectual property rights (IPR) protection. In addition to financial support measures, there must be a special focus on increasing IPR know-how and on tailor-made consulting and advice services.

1.4. The EESC would like to launch a discussion on how to boost knowledge of IPR and IPR management at all levels of the EU’s education systems.

1.5. The EESC encourages the European Commission to implement a unitary supplementary protection certificate (SPC) title and examine the possibility of applying the SPC system to new sectors.

1.6. The EESC believes that harmonising the copyright framework and copyright data management would boost the use of IPR in the creative sector.

1.7. The EESC calls for a social dialogue process that, in addition to legal rules, clarifies and defines fair IPR through collective bargaining in order to offer authors and producers incentives in the form of recognition of their creations as well as fair economic compensation.

1.8. The EESC considers geographical indications (GI) to be an important tool for enhancing the competitiveness of local producers and emphasises the potential of adding a harmonised system for GI protection of non-agricultural products.

1.9. The EESC recognises the economic potential and the public interest of fostering the flow of data across the EU, but stresses the problems arising from unbalanced regulations.
1.10. The EESC welcomes all measures to enforce the fight against IPR infringement, and the strengthening of the role of the European Anti-Fraud Office in the fight against counterfeiting.

1.11. The EESC advocates further enhancing direct support tools for EU businesses operating in non-EU countries and the strict enforcement of IP laws and EU trade agreement provisions to protect these businesses against IPR infringements.

1.12. The current health crisis has made evident the need for access to systemically relevant IP in critical situations. IPRs should not hinder the accessibility and availability of pandemic vaccines or treatments: effective compulsory licensing systems provide a safety net for society in emergency situations and fair compensation for businesses.

2. General comments

2.1. The EESC welcomes the European Commission’s action plan on intellectual property (IP) as an important approach to modernising the EU IP system and enhancing the huge innovation potential of EU companies, especially SMEs and microenterprises. As the great economic importance of intellectual property products such as inventions, artistic and cultural creations, brands, software, know-how, business processes and data within the EU continues to increase, the EESC regards an optimised easy-to-access legal and political framework as essential.

2.2. Many companies, especially SMEs, which represent 99% of all businesses in the EU, do not make (full) use of IP protection opportunities. Boosting the use of IP protection in EU companies — with a special focus on SMEs and microenterprises — needs to be the core aspect of the IP action plan. The measures required are manifold, ranging from the need to reduce costs, simplify procedures, raise awareness and knowledge, provide tailored advice and support and modernise the education system in relation to IPR know-how.

2.3. IP is a key economic factor — with IP-related industries accounting for almost 45% of Europe’s GDP and 30% of jobs — but also a key factor in meeting the most important challenges facing our society. The COVID-19 crisis has very clearly illustrated the EU’s dependence on professional excellence, combined with effective IP rules and tools to secure the fast deployment of critical IP. Success in combating climate change will also depend to a large extent on the rapid development and adoption of cutting-edge technologies and effective tools for fair approaches to the exchange of critical intangibles and data.

2.4. The technological revolution is a driving force for IPRs but also a challenge that requires a well-balanced approach to innovation-driven tools. Digitalisation and AI technologies raise many IP issues requiring consideration, such as transparency, data origin and copyright, the degree of human intervention, ethical principles, etc. The EESC supports the European Commission’s view that AI systems should not be treated as authors or inventors. In general, the EESC believes that — with well-balanced amendments and updates — the European IP framework is fit to address the challenges of digitalisation and AI. As the EU still lags significantly behind other regions in terms of the number of patents for digital products and technologies, special attention needs to be paid to measures to improve this important market.

3. Specific comments

3.1. Protection of Intellectual Property

3.1.1. The Unitary Patent System (UPS), as a one-stop shop for businesses, is crucial to significantly reducing the costs of patents, facilitating licensing, improving transparency and overcoming the barriers to accessibility for SMEs. Launching the UPS and making the Unified Patent Court (UPC) operational will considerably improve IP protection and must be a priority for the Action Plan. Facilitating the procedures will also speed up the overall process and thus increase the competitiveness of European patent holders. The UPC agreement provides an important basis for an efficient, specialised and technically competent patent litigation system that will be able to improve legal certainty, simplicity and efficiency. However, as the difficulties in implementation show, the aim should be to transfer the system into the EU legislative system. In the meantime, further delays caused by proceedings in Member States and/or the UK’s withdrawal from the agreement urgently need to be addressed. The fact that the EU’s share of global patents fell dramatically from 17.4% in 2009 to 11.3% in 2019 also clearly shows that further action is needed.
3.1.2 A supplementary protection certificate (SPC) can extend the protection granted by a patent for a medicinal product or plant protection product for which the corresponding marketing authorisation applies. It is therefore an important tool to offset the loss of effective patent protection due to the required length of tests, clinical/field trials and regulatory processes. The EESC considers SPCs to be essential to efficiently promoting innovation in new active substances and attracting R&D centres in the EU, while balanced exemptions from SPC rights must ensure affordability and sufficient supplies of medicines. Although the SPC system is a straightforward and innovation-stimulating system, it is still fragmented and requires the filing of an SPC application in each of the EU Member States where SPC protection is sought. Establishing, through a new separate EU regulation, a unitary SPC title and a single authority as one-stop shop for granting UP-SPCs would make SPC more attractive to patent holders, offer better protection for innovators and create legal certainty for third parties. The EESC also supports the approach of examining the applicability of an optimised SPC system to new sectors for which products are likely to require marketing authorisation.

3.1.3 Based on the experience of the revision of EU trademark legislation, the EESC is convinced that the updating of EU legislation on design protection will be implemented successfully. The positive experience of regulating these issues through EU legislation should be a motivation for the Commission to initiate a proposal for a new separate UP-SPC regulation and, in the long term, to incorporate the UPS into the EU legal system.

3.1.4 The EESC notes that geographical indications (GI) represent a unique and valuable resource for EU producers in an increasingly liberalised and competitive global market. The EU GI protection system has major economic value in the agricultural sector. In general, the system works very well, but the protection of GI has yet to be enforced, by means of a harmonised control system of the authorities and a common definition of food fraud, for example. Trade agreements should also focus on such specific protection measures. The EESC emphasises the potential of adding a harmonised system for GI protection of non-agricultural products, which are an important part of local identity. This would help local producers to present their quality products more successfully and have an additional positive impact on less developed regions. Furthermore, simplification of the registration procedure would benefit producers.

3.1.5 The Community Plant Variety Rights system is another positive example of a harmonised approach to IP protection based on an EU Regulation. It can also provide a safe base for small and medium-sized breeders and contains important exceptions for agriculture and breeders. In terms of its stated aims, the system forms a good basis on which breeders can efficiently contribute to green transition targets.

3.1.6 The EESC stresses that the protection of copyright, design and related rights is essential for the cultural and creative professions, which generate significant economic wealth and contribute considerably to European identity, culture and values — such as architectural and other cultural works — but often do not have sufficient know-how or financial means to protect IP and transform innovations into products. Harmonising the copyright framework and copyright data management is important and needs to be accompanied by additional support measures.

3.1.7 Employees who carry out creative work, and inventions in particular, are possible holders of rights. It is crucial to set up a social dialogue process at European, national, sectoral or company level that, in addition to legal rules, clarifies and defines fair IPR through collective bargaining in order to offer authors and producers incentives in the form of recognition of their creations as well as fair economic compensation. Agreements on the assignment of copyright should not be considered an obligation to transfer all IP to the employer without appropriate compensation.

3.1.8 The Biotech Directive offers an important framework for the legal protection of biotechnological inventions. It deals with politically and ethically sensitive topics and is therefore the result of a careful weighing-up of very controversial interests. However, the rapid development of biotechnology is also necessary in the areas of health and fighting major epidemics and combating hunger in the world. It is therefore important to promote research and innovation in these areas to a large extent, but also to disseminate and license it efficiently.
3.1.9 Trade secrets are intangible assets that complement intellectual property rights (IPR). They are widely used in the creative process that leads to innovation and the creation of intellectual property rights, and ensuring their effective protection is therefore extremely important. The EESC therefore considers that clarifying the basis laid down in Directive (EU) 2016/943 (1) is an important objective.

3.2. Use and deployment of IP — with a special focus on SMEs

3.2.1 The EESC considers increasing the use of the potential of intellectual property protection by SMEs to be one of the main objectives of the action plan, which affects all the different systems of intellectual property protection. While there is great potential for innovation in EU SMEs and micro-enterprises, the vast majority cannot add value to their intangible assets.

3.2.2 The cost factor is one reason why only 9% of EU SMEs have registered IP rights. The costs of obtaining a patent in the EU are currently significantly higher than in the USA or Japan, for example, and represent an enormous financial burden for SMEs and micro-enterprises. Therefore, in order to improve SMEs’ access to IP protection, costs need to be reduced. The rapid implementation of the UPS, which will significantly reduce patent registration costs, will be a game-changer for innovative SMEs and micro-enterprises such as liberal professional engineering companies. The EESC also stresses the importance of all the different approaches to financial and know-how support for SMEs, the EUIPO IP vouchers, the approach of helping SMEs benefit from their IP in order to gain access to finance and the IPA4SME programme, which provides up to EUR 15 000 to co-finance IP diagnostics and protection measures, etc. It also notes the important role of patent attorneys in this support system.

3.2.3 The EESC believes that a major problem is the enormous lack of knowledge of IPR management strategies in EU companies, especially but not only in SMEs and micro-enterprises. The provision of easily accessible general and tailored information, support and advice to SMEs and micro-enterprises, as provided through a variety of programmes and initiatives such as the European IP Helpdesk and through different channels and networks, is therefore of great importance in addressing this challenge and should be further extended. Awareness of the potential of IPR for entrepreneurs needs to be raised and combined with various low-barrier training programmes. The EESC suggests exploring ways of increasing the number of qualified IPR managers in EU companies.

3.2.4 The EESC would also like to launch a discussion on how to boost knowledge of IPR and IPR management in the EU education system: Basic knowledge and awareness of IPR management should be incorporated into secondary and higher education, with in-depth knowledge of IPR studies ranging from business and technical studies to many others included in curricula. IPR management should also be offered as a stand-alone subject in higher education. The EESC is convinced that boosting available know-how can increase the use of IP protection.

3.2.5 The importance of turning research results into innovation is obvious, and the EESC therefore welcomes any activities that promote knowledge-transfer and better IP management in the R&I community. SMEs and micro-enterprises are often small partners in a project consortium and in this role need better support to turn IPR into products and to protect their rights within such consortia. This should be a particular focus of support programmes that provide tailored advice and support.

3.3. Access to and sharing of IP-protected assets

3.3.1 The current health crisis has made the need for access to systemically relevant IP in critical situations obvious. IPR must not hinder the accessibility and availability of pandemic vaccines or treatments. The impact of research carried out with European public funds should be maximised by ensuring that the resulting knowledge and IP are shared. On the other hand, effective systems for issuing compulsory licensing are a safety net for society in emergency situations. Their procedures need to be based on a careful weighing-up of the different interests concerned, while ensuring that they are rapid and coordinated at European level in order to meet public health requirements effectively as possible. In this context, the EESC would also like to stress the importance of Regulation (EC) No 816/2006 concerning the compulsory licensing of patents for the manufacture of pharmaceutical products for export to countries with public health problems (2).

3.3.2 Enhancing transparency of ownership and management of IP is a prerequisite for facilitating the licensing and distribution of IP. In this context, the EESC would also like to highlight the need for rapid implementation of the UPS and the importance of improving copyright infrastructure in terms of information on rights-holders, terms and conditions and licencing options, also with regard to blockchain technology.

3.3.3 Since standardisation is a process with many different stakeholder interests, Standard Essential Patents (SEPs) require a particularly high level of transparency and fair licencing rules. The EESC therefore supports approaches for an independent system of third-party essentiality checks and measures to reduce infringements and points of friction.

3.3.4 The EESC recognises the economic potential of fostering data-sharing and the flow of data across the EU in all sectors, but stresses that enabling the flow and widespread use of data must be based on a balanced approach securing privacy, security, safety, ethical standards and legitimate IP protection interests. This needs to be secured in the revision of the Database Directive in 2021 (3).

3.4. **IPR Infringements**

3.4.1 Effective enforcement and judicial redress are the main criteria for a successful IP protection system and thus need to be substantially strengthened. The EESC stresses that the implementation of the UPC for patents will give an enormous boost to the enforcement of patent rights and that the enforcement of IPR in other IPR systems (e.g. insurance) must also be considerably strengthened through practical and/or legal measures. SMEs and micro-enterprises in particular often do not have the means to enforce their IPR.

3.4.2 Digitalisation has led to new forms of IP infringements such as the cyber-theft of trade secrets, illegal streaming etc. The EESC welcomes binding regulations, such as the Digital Services Act (4), ensuring a better legal framework.

3.4.3 Counterfeiting and piracy cause huge losses in EU sales, but they also pose health, safety and security threats to consumers. The EESC welcomes the cooperation of all stakeholders, the establishment of an EU toolbox and the strengthening of the role of the European Anti-Fraud Office in the fight against counterfeiting.

3.5. **Fair play at global level**

3.5.1 The EU is not a leader in global IPR competition. In patent applications, Asia increased its share of all global patent applications to 65% in 2019, while the EU's share fell dramatically from 17.4% (2009) to 11.3%. Enhancing the EU's position is therefore extremely important.

3.5.2 IPR protection and enforcement is an additional challenge for EU businesses that are operating in non-EU countries. Therefore, the EESC encourages all Commission measures to improve this situation. Negotiating IP chapters with a high level of protection in Free Trade Agreements and IP dialogues with trading partners are important long-term approaches, as well as cooperation in worldwide organisations such as the WIPO and the WTO and participation in global IP agreements.

3.5.3 The EESC stresses the importance of direct support tools providing information to EU businesses operating in non-EU countries, such as foreign investment screening, the Counterfeit and Piracy Watchlist and the Third Country report. Measures such as IP SME helpdesks to support SMEs and micro-enterprises are particularly important and should be further developed.

Brussels, 27 April 2021.

The President of the European Economic and Social Committee
Christa SCHWENG

Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act)’

(COM(2020) 842 final — 2020/374 (COD))

(2021/C 286/12)

Rapporteur: Emilie PROUZET

Referral
Council of the European Union, 10.2.2021
European Parliament, 8.2.2021

Legal basis
Article 114 of the Treaty on the Functioning of the European Union

Section responsible
Single Market, Production and Consumption

Adopted in section
31.3.2021

Adopted at plenary
27.4.2021

Plenary session No
560

Outcome of vote
(For/against/abstentions) 179/9/16

1. Conclusions and high-level recommendations

1.1. Over the last 10 years, issues and needs have been raised in terms of both competition and internal market rules. These have certainly increased during the COVID-19 crisis. The EESC welcomes the Proposal for a Regulation on the Digital Markets Act (DMA), which seeks to prevent gatekeepers from imposing unfair conditions on businesses and consumers and to ensure the accessibility of important digital services.

1.2. Online platforms are an ever-present phenomenon that challenges incumbents by changing how we consume and provide products and services, but also how we work and employ people. In this regard, the EESC welcomes the European Commission’s holistic approach in treating all the aspects of this ecosystem. The Committee will be particularly vigilant here with regard to taxation, data governance and working conditions. On the latter point, the EESC welcomes the European Commission’s consultation on improving the working conditions of platform workers and looks forward to the legislative initiative planned for the end of the year.

1.3. Achieving a level playing field for the different operators on the digital markets remains the primary objective. Europe needs a fair and contestable online platform environment in order to reach a better functioning of the internal market. The EESC believes that the DMA and the DSA (1) will together form the keystone of a framework that is to be perfected over years and applied in consistency with other key digital policies such as the e-privacy Regulation, the GDPR, the P2B Regulation and the alignment of competition rules with the digital era.

1.4. Safeguarding a fair, innovation-friendly business environment while protecting the end-users remains fundamental. The draft DMA is a response to the fast and evolving digital era, providing for short deadlines and rapidly updatable procedures while safeguarding legal certainty and the right of defence. Nevertheless, the EESC believes that Article 16 on market investigation into non-compliance must be strengthened in terms of both the time lag (waiting for three acts of non-compliance within five years would cause too much damage) and penalties.

(1) EESC opinion on Digital Services Act (see page 64 of this Official Journal)
1.5. By focusing on specific services regardless of the place where the service provider is established or the law applicable to the provision of the service, the Commission effectively addresses the issue of a level playing field for European and global online operators. The EESC believes that targeting the service rather than the operator is a good solution to the difficulties encountered when trying to supervise such diverse digital players.

1.6. Unlike the DSA, the DMA does not directly require the platforms’ designated gatekeepers to appoint a legal representative in the European Union. However, the evaluation and investigation procedures described below require dialogue and coordination between the core service platforms and the Commission. The EESC recommends including a reference to Articles 10 and 11 of the DSA to ensure that all gatekeepers establish a legal representative in the European Union.

1.7. In addition, a top priority for the EESC is preventing multiplying national legislation from fragmenting the internal market much more. The EESC believes that action at EU level is of the utmost importance and fully supports Article 1(5) and (7).

1.8. At the same time, the EESC agrees with the DMA that Member States need to have the possibility of acting in close cooperation with Commission (by means of a decision adopted under Article 3(6), under Article 33 or in parallel, on the basis of competition rules).

1.9. To cover cases where liability arises simultaneously from breach of the DMA and from breach of the rules under Articles 101 and 102 TFEU, it is understood that these two sets of rules can be applied simultaneously. The DMA should therefore clarify the implementation and coordination processes in the interests of legal certainty and efficiency (Article 1(6)).

1.10. The EESC believes that a detailed discussion is necessary regarding the reasons for and impact of the different approach to laying down new obligations pursuant to Article 10 and to extending practices pursuant to Article 17. At the same time, the EESC believes that the specific exceptional circumstances with regard to the six parameters used to designate gatekeepers should be defined (Article 3(6)).

1.11. The EESC therefore considers that the definitions of ‘core services’, ‘end-users’ and ‘business users’ should be much more specific.

1.12. The EESC believes it should be clarified that the practices referred to in Articles 5 and 6 constitute black practices. However, Article 6 on practices needs to be implemented specifically in the course of the regular dialogue between the Commission and gatekeepers.

2. Comments on scope and designation

2.1. The EESC believes that the scope of the services is very broad, although of key importance. Indeed, it is only practices directly related to these core platform services that fall within the scope and are subject to obligations. The EESC supports the legal certainty provided by revising the Regulation with any change in the scope of services.

2.2. The EESC notes that the concerns identified regarding the functioning of the core services market do not all relate to end-users (see services (f), (g) and (h)) and wonders whether the impact of the DMA process within B2B core services has been sufficiently assessed, especially in the advertising ecosystem (ads market).

2.3. If a core service is proposed, it is then possible to assess whether any provider of this service has attributes that cumulatively meet the criteria for being deemed a gatekeeper for that specific service. The EESC supports this cumulative approach.

2.4. Specific comments on the quantitative evaluation — presumed gatekeepers

2.4.1. With regard to the first threshold, the EESC notes that the threshold refers to the total turnover of the company that owns the platform, including any business lines that are not platform business models or not online activities, not the turnover of the service.
2.4.2. The EESC supports the financial data threshold, especially the way it covers capitalisation figures to reflect platforms’ ability to monetise their users and their financial capacity (including the ability to leverage access to the financial market).

2.4.3. With regard to the second threshold, the EESC recognises the relevance of the criteria relating to number of users (for the specific core platform service being analysed).

2.4.4. In the draft, the definition of end-user (Article 2(16)) is close to the definition of consumer and, as is conventional, placed in opposition to the professional user. Article 3(2)(b) defines the concept of end-users in terms of duration (months) and relevance (being active). The EESC believes that the definition of end-users should be precise (i.e. users passing through, visiting the site, using it once a month). The same question applies to business users. For the sake of legal certainty, the EESC recommends that the concept of ‘end-users’ and ‘business users’ be clarified or at least defined in the draft regulation.

2.5. Specific comments on the qualitative evaluation — evaluated gatekeepers

2.5.1. If the thresholds are not all cumulatively reached, the Commission may carry out a market investigation. This can be requested by a Member State (Article 15) and use six other parameters to determine whether the platform meets the three determining criteria (Article 3(6)).

2.5.2. The qualitative internal market assessment introduced by the European Commission echoes many parameters that are relevant in competition law and economics. Nevertheless, given the lack of precedents (no need to define a relevant market or prove dominance to establish gatekeeper status), it is unclear/untested how many/how strong the features/parameters will be.

2.5.3. If the objective is to target situations comparable to those identified in the quantitative assessment but where the thresholds have not been crossed, the EESC believes the assessment mechanism is only very limited in detail. At first glance, nothing prevents a broader interpretation of these parameters for application to a greater number of operators, as we know many business models across the economy are evolving and experimenting via digital transformation and new business models.

2.5.4. As these six parameters make it possible to designate gatekeepers, the EESC believes their specific exceptional circumstances should be defined.

3. Comments on listed practices

3.1. To understand the lists of practices set out in the DMA draft, the EESC believes it is important to look back at the work of the Commission: the practices identified in recent years, those already covered by the new P2B Regulation and those which could be covered by adapting competition law to the digital ecosystem.

3.2. The EESC believes the scope of practices should be clarified, especially if the Commission can extend it. Thus, it seems many of the practices referred to in Article 5 are part of the core service of the platform, whereas Article 6 refers to the use of such core platform services to leverage and influence market outcomes.

3.3. The EESC calls for the development of a robust certification system based on testing procedures that allow companies to affirm the reliability and security of their AI systems. Transparency, especially of the rating systems, traceability and explicable of algorithmic decision-making processes are a technical challenge that calls for the support of EU instruments such as the Horizon Europe programme (2).

(2) OJ C 47, 11.2.2020, p. 64.
3.4. Specific comments on unfair data driven practices

3.4.1. The EESC recognises the need to further improve the implementation of the General Data Protection Regulation (GDPR) by providing for the practice in Article 5(a). The EESC also encourages the Commission to regularly review the GDPR and related regulations in the light of technological developments (3).

3.4.2. With regard to the effective portability of data (Article 6(h)), the EESC points out that under the Free Flow of Data Regulation the cloud industry is developing a code of conduct to ensure contractual and technical transparency for ending contracts and porting data between cloud providers or back to on-premises storage. The code’s effectiveness in fostering portability in the cloud market is to be evaluated soon.

3.5. Specific comments on unfair self-preferencing

3.5.1. The DMA sets out the gatekeeper’s obligation to refrain from more favourable treatment even with respect to ‘any third party belonging to the same undertaking’. This further specification is not repeated in other provisions, however, although a gatekeeper might avoid the restriction stipulated in these provisions by providing relevant data to a third party. As an example, we can refer to Article 5(a) or Article 6(1)(a), where transfer of data to a third party (whether or not belonging to the same undertaking) is not prohibited. While Article 11 offers certain solution, we do not consider it sufficient.

3.5.2. Parity clause Article 5(b): preventing business users from offering the same goods and services to consumers under different conditions through other online intermediation services or search engines than through their platform would be now forbidden for gatekeepers. The EESC believes that the phrase ‘… at prices or conditions that are different …’ is broad and may encompass other criteria than just price that might need to be specified.

3.6. Specific comments on unfair access conditions

3.6.1. With regard to the practice in Article 5(d), the EESC notes that the P2B regulation already contains provisions on ensuring access for business users to make complaints and transparency regarding complaint handling and questions the relevance of this practice. The EESC questions why end-users are not covered.

4. Comments on investigative, enforcement and monitoring powers

4.1. For the purposes of Article 3(6), greater consideration should be given to involving the authorities of the Member States concerned in decision-making. We believe that the authorities of a Member State should have the right to submit to the Commission a request to issue a decision under paragraph 6, and the Commission should have the corresponding obligation to discuss the request and, where appropriate, allow the Member State concerned to adopt preliminary measures pending the Commission’s decision. For the purposes of the decision, the Commission should also request an opinion from all Member States where the potential gatekeeper operates.

4.2. The draft regulation combines self-evaluation by the platforms and evaluation by the competent authority — the European Commission. This assessment is nevertheless carried out in the first instance by the core service platform, which has to notify the Commission that these thresholds have been reached within three months (Article 3(3)). The EESC recognises and supports the fact that the DMA process makes the platforms accountable. It also notes that the draft does respect the rights of defence and appeal and the pace of digital business.

4.3. The EESC supports the DMA measures enabling the Commission to assess and monitor the growth of gatekeeper platforms, such as mergers outside the thresholds of Regulation (EC) No 139/2004 (4).

(3) OJ C 47, 11.2.2020, p. 64.
4.4. Moreover, the EESC supports the assessment carried out by the Commission of whether the current EU regime allows important acquisitions of low-turnover targets which may have an impact on competition in the EU internal market to be captured sufficiently (*). Commissioner Vestager’s proposal to start accepting referrals from national competition authorities on mergers whether or not those authorities had the power to review the case might be an option (**).

4.5. Alongside the EU Commission, the planned Digital Markets Advisory Committee also needs to be set up for maximum effectiveness. The EESC finds Article 32 very vague in this respect and believes that the committee should be entrusted with ongoing supervision and monitoring. The EESC also suggests considering whether the committee could receive complaints from consumer associations and social partners.

4.6. The EESC believes that organisations concerned with business interests, consumer protection and trade unions should be heard and their views taken into consideration, as they might be in competition cases. Article 20 of the DMA authorises the Commission to carry out interviews and take statements. The EESC suggest that their involvement and their right to be heard should be clearly stated in this article.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

The following section opinion text was rejected in favour of an amendment adopted by the Assembly but obtained at least a quarter of the votes cast:

‘2.3. If a core service is proposed, it is then possible to assess whether any provider of this service has attributes that cumulatively meet the criteria for being deemed a gatekeeper for that specific service. The EESC does not believe that this cumulative approach effectively covers the gatekeepers, but proposes that only one criterion has to be met, preferably the number of users in order to act aligned with the DSA. It also expresses concern that the procedure to identify gatekeepers can be tedious and therefore recommends a swifter process.’

Result of the vote:
For: 98
Against: 83
Abstentions: 20

(COM(2020) 825 final — 2020/0361 (COD))

(2021/C 286/13)

Rapporteur: Gonçalo LOBO XAVIER

Referral Council of the European Union, 11.2.2021
European Parliament, 8.2.2021

Legal basis Article 114 of the Treaty on the Functioning of the European Union
Section responsible Single Market, Production and Consumption
Adopted in section 31.3.2021
Adopted at plenary 27.4.2021
Plenary session No 560
Outcome of vote (for/against/abstentions) 235/3/5

1. Conclusions and recommendations

1.1. The EESC welcomes the proposal for a single market for Digital Services (Digital Services Act) at a time when new and innovative information society (digital) services have emerged, changing the daily lives of EU citizens and shaping and transforming how they communicate, connect, consume and do business. These services have made far-reaching contributions to societal and economic transformation in the EU and across the world, and the COVID-19 crisis has demonstrated how crucial they are in order to create a better society.

1.2. The EESC supports the Commission’s efforts to prevent the internal market being fragmented by a proliferation of national rules and regulations that could undermine the system and prevent all European companies benefiting from a strong single market. Therefore, the EESC calls for a clear statement regarding the exhaustive nature of the Digital Services Act. The EESC believes this is an opportunity to establish global standards for the digital markets that can lead Europe into this new era, ensuring a high level of consumer safety and protection online.

1.3. The EESC is aware that the discussion on the DSA will take time and compromises will be needed in the long term. Despite that, the EESC calls on the Commission and the Member States to define a reasonable schedule for setting up the discussion and inclusive public consultation and implementing the regulation and strategy. It is fundamental for social partners and civil society organisations to play a role in this process in order to achieve a level playing field for all players, regardless of whether they are established in the European Union.

1.4. The EESC also believes that, with the importance of digital technologies, the need for new rules and regulations to solve the problems and challenges of these technologies has become a priority. A new economy calls for new approaches.

1.5. The EESC welcomes the greater transparency for recommender systems and advertising. However, these recommender systems should not be demonised, but it should be ensured that consumers get only the advertising they want. Regulations should therefore stress individual autonomy and the EESC believes that Articles 29 and 30 of the regulation should therefore achieve a proper balance.

1.6. The EESC notes that there are many shortcomings with regard to the country of origin principle and calls for the careful consideration of alternative methods, such as the country of destination principle, especially in tax, labour and consumer issues unless there is a stronger regulation on the EU level in order to ensure fair competition and the highest possible level of consumer protection. It should be ensured that the same labour law provisions apply for the platform
worker as are in place in the country where the service is provided, as poor working conditions for employees have become highly problematic for fair competition. The overall aim is to enforce and strengthen the internal market by securing level playing field for all actors.

1.7. The transparency obligations should not prevent advances in technology, particularly in the field of artificial intelligence and computer science. Even though black box AI poses risks, it may also bring significant benefits. The EESC stresses the need to ensure that the law is fine-tuned and does not hinder technical progress taking into account the highest possible level of consumer and worker protection. It calls for an adequate framework to be developed to allow companies to assert the fairness, reliability and security of their AI systems.

1.8. The exemption of liability for hosting should only cease to apply when it comes to content that is clearly illegal or that has been established by a court decision as illegal. The EESC recommends establishing a positive liability regime for online marketplaces to be applied in certain circumstances.

1.9. The definitions used should be streamlined and, to the extent possible, harmonised with related legal texts such as the Digital Markets Act, the Directive on Copyright in the Digital Single Market and the P2B Regulation.

1.10. The Digital Services Act is part of a wider regulatory approach to the platform economy, which must also address taxation, workers' rights (including social protection, health and safety, right to organise and collective bargaining), wealth distribution and sustainability and product safety. The EESC draws attention to the huge task of achieving proper coordination between all relevant instruments and initiatives, notably in the field of intellectual property, telecommunications, data and privacy, product liability, product safety, the audiovisual sector and, of course, the e-commerce directive. A proper overview is needed of how these different perspectives affecting the DSA can be integrated.

1.11. The EESC will keep paying particular attention to taxation, data governance, employment status, working conditions and consumer protection, as they are significant factors for the, sometimes unfair, competition in the digital economies. The Committee stresses that these challenges need to be tackled in the light of the Sustainable Development Goals, the Digital Agenda, the Charter of Fundamental Rights and the European Pillar of Social Rights.

2. General comments

2.1. Digital technologies can be crucial for our daily life. They can be of great benefit to society and the economy, and it is now universally acknowledged that they are indispensable for the way the market operates and the way we relate to each other, with real benefits for the community at large. However, digital services, have also posed significant challenges for individuals, society and the market. A fairer Europe depends on a proper regulation of the digital sector and on ensuring proper distribution of those benefits and adequate protection of all market participants (citizens, consumers, workers, and companies, whatever their size).

2.2. The Commission's response to a number of documents, case-law developments and calls — on the one hand for ambitious reforms of the existing EU e-commerce legal framework while maintaining the core principles of its liability regime, prohibition of general monitoring and the internal market clause, and on the other hand for an updated, fairer and competitive digital market — is focused on two main areas: the Digital Services Act and the Digital Markets Act.

2.3. With the Digital Services Act the EU should ensure a high level of European consumer protection for several aspects in the digital economy, notably on digital online platforms. Combating illegal content and increasing transparency in the way advertising targets the public are among the most important and controversial aspects of this proposal.
2.4. With the Digital Markets Act the Commission focuses on the way the European digital market operates while attempting to make it more balanced, more competitive and more innovative, providing people with more and better services, by establishing a level playing field for every market participant.

2.5. The EESC therefore welcomes the Commission’s efforts to further regulate the digital economy and make it reliable for both society and the economy. Citizens, workers, and economic operators, especially SMEs and vulnerable individuals, need safeguards in their relations with digital platforms and security needs to be guaranteed in all operations, in terms of both content, economic transactions and even intellectual property rights.

2.6. EU cyberspace rules are becoming increasingly complex and fragmented. Effort should be made to increase their readability and coherence. Overly complex rules can be bad for businesses and citizens alike, stifling innovation, increasing costs and making it harder for people to exercise their rights. The EESC therefore welcomes the Commission’s intention to coordinate and streamline the procedural aspects of enforcement rules within the Member States and the choice of a directly applicable legal instrument.

2.7. The EESC stresses that the Digital Services Act should be coherent with the potential legal framework addressing other relevant issues relating to the platform economy such as workers’ rights (including social protection, health and safety, right to organisation and collective bargaining) (1), tax and wealth distribution and sustainability, and stresses the need to tackle these challenges at European level and in the light of the Sustainable Development Goals, the Digital Agenda, the Charter of Fundamental Rights and the European Pillar of Social Rights. Among the future Commission Initiatives, the European Economic and Social Committee will be particularly vigilant with regards to taxation, data governance, employment status, working conditions and consumer protection, as they are significant factors for the, sometimes unfair, competition in the digital economies.

2.8. Regulation of cyberspace should be as futureproof and technologically neutral as possible. This will provide clarity and market opportunities for all with a focus on consumer protection and security.

2.9. It is important that in the field of digital taxation the Commission takes initiatives within the framework of international discussions by providing principles of equity and transparency, distribution of wealth and sustainability, and underlines the need to deal with these questions at European level and in line with the Sustainable Development Goals, the Digital Strategy, the Charter of Fundamental Rights and the European Pillar of Social Rights.

3. Specific comments

3.1. Better and more efficient regulation, inter alia, to avoid unfair competition, are one of the main topics in this new economy. The Commission clearly believes — and the EESC supports it — that new means and approaches are needed to regulate a market that cannot use the same tools and conduct ‘business as usual’. It is a fact that the ‘normal’ regulatory competition framework is not sufficient to face the challenges and difficulties caused by the existence of bigtechs efficiently.

3.2. The EESC calls for clearer rules, such as those the Commission is willing to explore based on a simplified fast track regulatory internal market framework for the digital world. The EU must update its regulatory toolbox to effectively address digital markets in addition to gatekeeper platform issues. The new economy demands different action and thus the EESC also welcomes the Digital Markets Act initiative (2).

3.3. European digital sovereignty must be factored into all regulatory exercises, to protect not just businesses but also workers, consumers and citizens. With the COVID-19 crisis, the sale of unsafe products, fake reviews, unfair commercial practices and other consumer law violations, piracy and counterfeiting on digital platforms rose to unacceptable levels. These illustrate the value of the DSA initiative and the urgent need for action.

(1) European Commission consultation on improving the working conditions in platform work.
(2) EESC opinion on Digital Markets Act (see page 64of this Official Journal).
3.4. It is also clear that the enforcement mechanisms for fighting fraud and illegal activity associated with digital platforms present a challenge and ensure that the companies which profit the most in the digital economy also have more responsibilities. The EESC believes that the DSA has a critical role to play in restoring confidence in the market and getting the Member States to define a swift and efficient enforcement mechanism that suits all Member States, taking into account their existing differences. The EESC welcomes the fact that the enforcement deficits in the area of illegal online advertising are very likely to be reduced due to the DSA.

3.5. Whatever the approach taken in terms of enforcement systems and mechanisms, sufficient funds need to be allocated by the Commission and the Member States to invest in human resources, training systems, software and hardware that can reinforce confidence in the market and individuals. It is therefore a priority to define the costs involved of implementing the DSA as well as the anticipated costs for society if no action is taken, and ensure adequate conditions in order to get every Member State on board.

3.6. When it comes to the scope of the DSA, size matters: not all companies in this field should be treated in the same way, to avoid unfair competition based on financial power and dimension. However, the proposed criterion, i.e. the number of workers, might prove to be inadequate and easy to circumvent. This is especially critical, as significant parts of the obligations for platforms set out in the proposed regulation do not apply to micro or small enterprises, such as complaint handling, abusive behaviour, reporting criminal offences, advertising transparency, independent audits and trusted flaggers.

3.7. Nevertheless, the EESC underlines that it is important to protect SMEs, micro and social economy enterprises. These may not be able to afford the compliance and investment costs and it must be ensured that they will not suffer from the implementation of a regulation that was supposed to bring fair competition. The EESC therefore calls for alternative criteria to be found in order to define micro and small enterprises (Article 16), such as annual turnover or their ownership or organisational structure.

3.8. The EESC welcomes the adaptation period for companies that fall into the category of very large online platforms (Article 25(4)). Often, these companies grow very fast and should be given a fair chance to adapt to the more stringent requirements and duties established in the proposal.

3.9. Although the proposal makes it clear that it is to be understood as *lex generalis*, there seem to be many closely-related definitions in different instruments, which may become too cumbersome from the perspective of compliance, imposing additional costs on companies and consumers. For example, the concept of ‘online platform’ is defined in the proposal; the concept of ‘platform’ is not defined but is used in the P2B Regulation (Regulation (EU) 2019/1150 (3)); the Digital Single Market Directive ((EU) 2019/790 (4)) uses the concept of ‘online content-sharing service provider’; and the Digital Markets Act proposal refers to ‘gatekeepers’ and ‘core platform services’.

3.10. With the rise of digital services, business models have evolved and become more complex and distinctions between different actors become blurred. Given the fast developments in the sector, which are a challenge for regulators, there is a need for clear definitions. The EESC recommends defining platforms, users or recipients (the proposal uses both terms but ‘recipients’ occur much more frequently), consumers and workers in the digital economy more clearly.

3.11. Under the current proposal, the rules on the traceability of traders only apply ‘where an online platform allows consumers to conclude distance contracts with traders’ (Article 22). An alternative is to define these providers/platforms that allow consumers to conclude distance contracts with traders as ‘marketplaces’ and clarify which rules apply to that category of intermediary.

3.12. The development of codes of conduct pursuant to Articles 35 and 36 should be conducted in an open and participatory manner. Organisations representing users and recipients, civil society organisations, social partners and relevant authorities should be involved.

3.13. The EESC notes that there are many shortcomings with regard to the country of origin principle and calls for the careful consideration of alternative methods, such as the country of destination principle, especially in tax, labour and consumer issues unless there is a stronger regulation on the EU level in order to ensure fair competition and the highest possible level of consumer protection. It should be ensured that the same labour law provisions apply for the platform worker as are in place in the country where the service is provided, as poor working conditions for employees have become highly problematic for fair competition. The overall aim is to enforce and strengthen the internal market by securing level playing field for all actors.

3.14. Furthermore, the system set out in Articles 8 and 9 of the proposal should not be seen as an alternative to the recognition and enforcement of judgements, and it should be clarified that the rules on refusal of recognition and refusal of enforcement remain valid and applicable.

3.15. The EESC welcomes the clarification that own-initiative investigations do not affect the applicability of safe havens (Article 6) and the fact that the general principle of a lack of obligation to monitor (Article 7) is preserved. However, those rules should not affect the duty of online marketplaces to conduct regular checks on traders and on products and services offered set forth in Article 22.

3.16. The first sentence of Article 12(1) should be clarified, namely to specify whether the provision covers information such as technical data provided to a software vendor in an SaaS agreement.

3.17. The EESC welcomes the detailed regulation of the notice and internal complaint-handling procedure and the safeguards brought by the proposal. However, the EESC believes that a safe harbour (Article 5) should only be excluded where the content is clearly illegal under national law in the country of origin or under directly applicable EU law or where it has been established by a court of law to be illegal. Otherwise, intermediaries will have an incentive to remove content by default. The legal assessment of certain types of content may be very complex and intermediaries should not be held liable if they have not removed it. This is in line with the duty to suspend established in Article 20, which refers to manifestly illegal content.

3.18. The creation of digital services is essentially based on the ability to manage and access data. In this regard, it is important to remember the Data Governance Act (COM(2020) 767 final), which mentions the possibility of creating 'data management and exchange cooperatives', an instrument which will favour small businesses. Businesses and individual entrepreneurs who might not be able to access or process large amounts of data individually. These structures could provide shared participatory governance for managing intermediation, exchange or data sharing services between companies and between businesses and entrepreneurs, which could provide data but also benefit from and use it.

4. Implementation strategy — get things done

4.1. It is stated that the impact assessment report clarified the links between the Digital Services Act and the broader regulatory framework, providing more detailed descriptions of the policy options, with more detailed analysis of the underlying evidence addressed in the revised impact assessment report. This is crucial, but does not mean that society will not remain anxious in the face of all the variables involved and continue to be cautious. The importance of digital services in our economy and society, but also the growing risks they bring, will continue to increase.

4.2. With regard to added value in the enforcement of measures, the initiative creates substantial efficiency gains in cooperation across Member States and pools some resources for technical assistance at EU level with regard to inspecting and auditing content moderation systems, recommender systems and online advertising on very large online platforms. This, in turn, will make enforcement and supervision measures more effective as the current system relies to a large extent on the limited capability for supervision in a small number of Member States. However, the proposal needs to be improved to ensure enforcement and redress for consumers happen in an effective and swift manner. The DSA must include remedies, including compensation for damages, for consumers when companies fail to abide by their obligations under the DSA.
4.3. It is stated that the Commission will establish a comprehensive framework for continuously monitoring the output, results and impact of this legislative instrument at the date of its application. Based on the established monitoring programme, an evaluation of the instrument is envisaged within five years from its entry into force. The EESC believes that this is not a reasonable time frame that will inspire confidence in the market and citizens and ensure consistency with the review of the e-Commerce Directive. The Commission should provide for regular evaluation every two years.

4.4. The rules should be effectively communicated and should not tarnish EU’s image. Protection of EU citizens and consumer protection should be one of the main points of the future communication and enforcement. The EU is, and must remain, a welcoming place for companies, workers and citizens, including those outside the EU. The regulation should not come across as a burden or obstacle but rather as a balanced approach to 21st century internet regulation, setting the standard for a better and fairer digital economy, a safer online space and safeguarding vibrant democracies.

5. Fundamental rights

5.1. The rights of workers, ensuring a high level of consumer protection, privacy and personal data protection and fundamental freedoms such as freedom to conduct a business and provide services and freedom of expression, thought, and opinion must be properly safeguarded, in accordance with legislation and in line with the Charter of Fundamental Rights. The proposal should aim to strike a fair balance in that regard.

5.2. An important aspect of the proposal is procedural fairness. However, that alone may not be sufficient to ensure actual, effective fairness if the incentives are not properly aligned. A broad concept of illegal content or, as some have proposed, ‘harmful content’, may prove to restrict freedom of expression and opinion.

5.3. Human dignity is safeguarded by strong and clear rules to protect citizens and consumers. These aspects play an important role in the proposal and should be preserved.

5.4. The framework proposed by the DSA provides authorities with the right tools to prevent, monitor and react to manipulation, discriminatory risk, and other abuses. The EESC considers that the EU and its Member States must invest considerable resources and ensure those are leveraged to the benefit of society at large.

5.5. In order to mitigate discriminatory risk, the EESC urges that sufficient resources must be invested by the EU and its Member States to control and supervise the algorithms used by the platforms. The EESC appreciates the increased access to data and algorithms and recommends that it must be guaranteed for public authorities on all levels as well as for vetted independent researchers, including from independent civil society that work for the public interest.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) considers the proposed strategy as a positive step towards protecting governments, citizens and businesses across the EU from global cyber threats, and safeguarding economic growth.

1.2. The EESC is of the view that additional funding resources need to be made accessible to state entities to enable investments in cybersecurity infrastructure to respond effectively to a crisis such as a pandemic.

1.3. The proposals to build a network of Security Operations Centres (SOCs) across the EU, and for the European Union Agency for CyberSecurity (ENISA) working with all stakeholders to limit risks posed by 5G, are welcomed by the EESC.

1.4. The EESC also welcomes the proposal to further develop Europol’s role as the centre of expertise on cybercrime. Cooperation with the multi-stakeholder community as well as at international level are also deemed important.

1.5. The EESC cautions about the skills gap in cybersecurity, and recommends a EU-wide Cyber Security Career Pathways Tool that helps individuals identify, build and navigate a relevant career path.

1.6. The EESC highlights the issue of disinformation. Spreading disinformation could have serious consequences and preventing disinformation should form part of any strategy on cybersecurity.

1.7. The EESC recommends that any foreign investment in strategic sectors in the Union conforms with the EU’s security policy.

1.8. The EESC cautions about the advent of quantum computers and the risks they pose. Hence, the need for a transition to quantum-resistant or post-quantum cryptography.

1.9. The EESC recommends that the Commission’s cybersecurity strategy be updated regularly but not less than every two years to respond effectively to future technologies and future risks.

1.10. Finally, the EESC highlights the importance of social dialogue in the design of cybersecurity policies that effectively protect individuals in the case of remote working and more general online activity.
2. European Commission’s Communication

2.1. The objective of this Communication is to emphasise the EU’s commitment to safeguarding an online environment providing the highest possible freedom and security, for the benefit of its citizens.

2.2. The Communication outlines the EU’s vision in this domain, defining roles and responsibilities, and proposes specific activities at EU level aimed at providing robust and effective protection whilst safeguarding citizens’ rights so as to make the online environment safe and secure.

2.3. The actions proposed aim to:

— achieve cyber resilience, by increasing capabilities, preparedness, cooperation, information exchange and awareness in the field of Network and Information Security, for public and private sectors and at national and EU level;

— standardise process sequences for cyber defence across the Union as well as building up a database containing relevant information to provide threat intelligence in support of the affected sector or economy;

— drastically reduce cybercrime by strengthening the expertise of those in charge of investigating and prosecuting it, by adopting a more coordinated approach between law enforcement agencies across the Union, and by enhancing cooperation with other actors;

— establish EU-wide education and certification for professionals that meet the requirements of qualified cybercrime experts evolving into a Union-wide coherent skill level;

— develop an EU cyber defence policy and capabilities in the framework of the Common Security and Defence Policy;

— foster the industrial and technological resources required to benefit from the Digital Single Market. This will help stimulate the emergence of a European industry and market for secure ICT; it will contribute to the growth and competitiveness of the EU economy; and it will increase public and private spending on cybersecurity Research and Development (R & D);

— enhance the EU’s international cyberspace policy to promote EU core values, to define norms for responsible behaviour, to advocate for the application of existing international law in cyberspace and to assist countries outside the EU in building cybersecurity capacity; and

— develop and implement an EU security seal of approval for products, services and technologies that meet the standards and requirements for cyberproof solutions.

2.4. The proposed strategy covers the security of essential services such as hospitals, energy grids and railways and the ever-increasing amount of connected equipment in our homes, offices and factories, building collective capabilities to respond to major cyberattacks and working with partners around the world to ensure international security and stability in cyberspace.

2.5. Since cybersecurity threats are almost always cross-border, and because a cyberattack in one country can affect either a group of Member States or the EU in its entirety, the Commission also proposes setting up a Joint Cyber Unit so as to provide the most effective response to cyber threats using the collective resources and expertise available to the EU and Member States.

2.6. The EUR 2 billion strategy will be funded under the EU’s Digital Europe Programme and Horizon Europe, with investments from Member States and the private sector to be added.
3. General comments

3.1. Today, cybersecurity is universally accepted as an integral part of the functioning of the EU institutions and agencies, and of each Member State and its economy. Cybersecurity is crucial to support the Union’s energy infrastructure and smart grid deployment (1), and the digitalisation and greening of EU economies. Equally as important is the protection and safeguarding of citizens’ fundamental rights and freedoms guaranteed by cybersecurity. Safeguarding rights and freedoms is particularly relevant since cyberattacks could adversely affect citizens and households (as well as businesses, organisations and public services). The recent computer attack at a hospital centre in Tournai, Belgium, is an example of a threat posed not just to physical assets but human life too because of the postponement of surgical operations (2).

3.2. According to DIGITALEUROPE (3), cyber threats present a major obstacle to Europe’s path to prosperity. Worldwide, the economic loss due to cybercrime was estimated to reach EUR 2,5 trillion by the end of 2020, and 74 % of the world’s businesses can expect to be hacked in 2021. Despite this, only 32 % of European businesses have cybersecurity policies. Clearly and inevitably, cyber threats require a coordinated EU response and a cybersecurity strategy capable of both meeting current challenges and defending organisations and citizens from the next generation of cyber threats. This applies especially within public services where vast amounts of personal and sensitive data is managed and which need to be protected. Furthermore, the path to European data sovereignty and maintaining data confidentiality within the Union needs to be strengthened via cyber and digital resilience, which in turn will enhance prosperity within the EU.

3.3. The potential economic losses arising from cyberattacks are huge and include:

— the loss of intellectual property and confidential business information;

— online fraud and financial crimes, often the result of stolen personally identifiable information (PII);

— financial manipulation, using stolen sensitive business information on potential mergers or advance knowledge of performance reports for publicly traded companies;

— opportunity costs, including disruption in production or services, and reduced trust for online activities;

— the cost of securing networks, such as buying cyber insurance (4), and paying for recovery from cyberattacks; and

— reputational damage and liability risk for the hacked company and its brand, including temporary damage to stock value.

3.4. It is relevant to note that Europe suffers the highest economic impact of cybercrime, which is estimated at 0,84 % of the EU’s GDP, compared with 0,78 % in North America, according to the latest report on the economic impact of cybercrime by the Center for Strategic and International Studies (CSIS).

3.5. Against this background, the proposed strategy, which follows a period of extensive consultations with stakeholders, could not have come at a better time with experts predicting that the number of connected devices around the world will rise to 25 billion by 2025. A quarter of these devices are expected to be in Europe.

(1) A cyberattack on a smart grid could impact energy supply to consumers and businesses.
(3) https://www.digitaleurope.org/
(4) Cyberinsurance of course is not in unlimited supply. COVID-19 has actually highlighted the fact that the accumulation of risks is a challenge to insurability. Recent work by AON support the claim that insurance is only a very minor (5 %) part of expenses in cyberreadiness. Auditing and training were found to be the more important determinants of cost.
3.6. The announcement of the strategy coincided with computers at US federal government agencies being reportedly compromised by a cyberattack targeting a US company that develops software for businesses to help manage their networks and IT systems. Hundreds of US corporations were also vulnerable to the attack, in which malware was added by hackers to a software update that was downloaded by thousands of clients of the affected US company. This incident shows how public administrations, businesses across all sectors and society as a whole, could be at risk of cyberattack.

3.7. Not surprisingly, key sectors are coming under the scope of the strategy: they include data and cloud service providers, telecommunications, government IT systems, and manufacturing. Other relevant examples where cybersecurity threats could arise include contact tracing apps such as those being applied in response to COVID-19. Securing contact tracing apps obviously helps to increase public trust and confidence in the protection of private data with regard to COVID-19 measures deemed vital in response to the pandemic.

3.8. The COVID-19 pandemic has accelerated a change in working patterns with as many as 40% of EU workers having switched to remote locations in 2020 (5). However, an estimated 40% of EU users experienced security-related issues in 2020 with over 12% of businesses affected by cyberattacks.

4. Specific comments

4.1. The EESC considers the proposed strategy as a step in the right direction towards protecting governments, citizens and businesses across the EU from global cyber threats and providing leadership in cyberspace, while also ensuring that everybody can reap the benefits of the internet and the use of technologies.

4.2. The EESC considers cybersecurity to be essential to safeguard economic activity and enhance economic growth, as well as to ensure user confidence in online activities. It also agrees that bold steps are needed to ensure that Europeans can benefit securely from innovation, connectivity and automation.

4.3. The EESC acknowledges that, increasingly, the EU’s economic sectors are becoming more digitally dependent and interdependent. There has also been a huge expansion in the use of internet of Things (IoT) devices by consumers and businesses, as well as in industrial settings such as manufacturing, while FinTech and RegTech have also permeated into the mainstream. The rollout of 5G has picked up speed and, most recently, the COVID-19 crisis has accelerated the digital transformation of many companies and governments, forcing them to conduct business remotely almost overnight, largely leveraging cloud-based services. Such developments require an effective, speedy and inclusive cybersecurity response.

4.4. These changes have increased the level of critical risk to governments and industry. The EESC therefore supports the new cybersecurity strategy and its range of proposals to improve cyber resilience both in the EU and externally. Though public entities are eligible for EU funding under the various relevant programmes that support investments in this area such as Horizon 2020/Horizon Europe, the EESC is of the view that further funding opportunities may be required to publicly or partially publicly owned entities, to enable investments for an adequate cybersecurity infrastructure to ensure security of supply for citizens especially in a time of crisis such as during a pandemic.

4.5. The European Commission’s proposal to build a network of Security Operations Centres (SOCs) across the EU that would leverage Artificial Intelligence (AI) and machine learning to improve threat and incident detection, analysis and response speeds is important and timely. The EESC recognises that preventing successful cyberattacks manually is becoming more difficult, due to the overwhelming number of daily alerts for security teams to deal with, coupled with the general shortage of specialised workers within the field. All this makes the automation of SOCs inevitable.

The EESC welcomes the objectives and actions on 5G security, which will be imperative to help mitigate new risks stemming from the growing attack surface that 5G network infrastructures will create. The EESC in particular supports the call for the European Union Agency for CyberSecurity (ENISA) and Member States to work with all stakeholders to better understand new 5G security technologies and capabilities as well as threats. It is evident that the strategy acknowledges that 5G’s utilisation of new technologies like network virtualisation, network slicing and edge computing are particularly prone to specific vulnerabilities that require additional security measures.

The EESC also welcomes the proposal to further develop Europol’s role as the centre of expertise on cybercrime to support national law enforcement authorities, as well as increased funding and a stronger mandate for CERT-EU. Both entities play critical roles in supporting cybersecurity efforts throughout the EU. These efforts will no doubt help improve the cybersecurity of EU institutions and agencies and beyond.

The EESC commends the emphasis within the strategy on the EU’s international cooperation, such as via cyber diplomacy in international relations, increased bilateral dialogues on cybersecurity, and cyber capacity-building in third countries. Cybersecurity threats are global and not just regional, and effective policies to counter them must also be global.

The EESC also notes that the importance of dialogue and cooperation within the multi-stakeholder community, notably by regular exchanges with the private and public sectors, the social partners and academics, is emphasised in the strategy. This approach is welcome and will be essential to further developing the proposals contained in the strategy and to addressing important developments such as the security challenges posed by remote working. The input of all relevant stakeholders should be ongoing as the level of technology used in cybercrime becomes more sophisticated.

The EESC welcomes the emphasis placed on developing relevant skills protecting against cyber threats generally. However, for the majority of European companies and especially SMEs, the growing skills gap remains a huge problem against cybersecurity threats. The EESC believes that this skill gap can only be addressed through an EU-wide Cyber Security Career Pathways Tool that helps individuals identify, build and navigate a potential career path in cybersecurity by increasing understanding of the knowledge, skills and abilities needed to begin, transition or advance a cybersecurity career. This tool should also include specific programmes which address accessibility and diversity in the cybersecurity space. The role of Vocational Education and Training (VET) institutions is deemed critical to support an EU-wide Cyber Security Career Pathways Tool. Moreover, the EU should increasingly be looking to joint research initiatives (within the EU and beyond) to produce skilled and qualified cybersecurity professionals in an inclusive manner, given the evolving role technology plays in creating a more inclusive workplace and society. Finally, encouraging students to enter cybersecurity degree studies by providing scholarships for bachelors, masters and graduate degrees focusing on cybersecurity, in return for service in EU institutions and agencies as well public services across the EU upon graduation, should be actively considered.

The EESC notes that one aspect that has not been addressed in the Cybersecurity Strategy is the connection between cybersecurity and disinformation. Specifically, the EESC refers to the study, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs (6), in the era of internet cyberspace, spreading disinformation could have serious consequences. Cross-border attacks can target information centres, governmental or European institutions to spread disinformation and such attacks could also reduce trust in public authorities. Hence, the need to place emphasis on preventing disinformation in any strategy on cybersecurity.

The EESC also notes that foreign investment in strategic sectors, acquisition of critical assets, technologies and infrastructure in the Union and supply of critical equipment may also pose risks to the EU’s security. In this regard and in accordance with existing rules on public procurement, the EESC recommends that security considerations be given more weighting when awarding contracts.

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4.13. The EESC also notes that the security of current cryptographic software and systems is undermined by the advent of quantum computers, which are expected to be publicly available in a decade or less. This motivates the need for a transition to quantum-resistant or post-quantum cryptography. This is witnessed by worldwide initiatives for the standardisation of post-quantum cryptographic schemes, such as the US NIST Post-Quantum Cryptography Standardisation Process, the European Telecommunications Standards Institute (ETSI) working group on Quantum-Safe Cryptography and the Chinese Association for Cryptologic Research Post-Quantum Cryptography Competition.

4.14. The EESC recommends that national cybersecurity strategies be revised to ensure consistency with the Commission’s strategy and to ensure that decisions taken at Member State level converge with the proposals contained in the Commission’s strategy. The EU-wide strategy as well as national strategies should converge to deal with cyber threats effectively today and in the future.

4.15. Because future risks are largely unpredictable and with reference to 4.13 above, the EESC recommends that the Commission’s cybersecurity strategy be updated regularly but not less than every two years to respond effectively to future technologies and future risks. As stated earlier, stakeholders’ involvement and high-level research will also be critical in updating cybersecurity strategies.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system), and amending Regulation (EU) 2018/1726'

(COM(2020) 712 final — 2020/0345 (COD))

(2021/C 286/15)

Rapporteur: Ozlem YILDIRIM

Consultation European Commission, 24.2.2021
Legal basis Article 81(2) and Article 82(1) of the Treaty on the Functioning of the European Union
Section responsible Section for the Single Market, Production and Consumption
Adopted in section 31.3.2021
Adopted at plenary 27.4.2021
Plenary session No 560
Outcome of vote 247/0/3

1. Conclusions and recommendations

1.1. The EESC welcomes the proposed regulatory initiative, which needs to be supplemented by the European Parliament's proposals. e-CODEX will have an indirect positive impact as it simplifies and speeds up cross-border judicial procedures and cooperation, which will also contribute to improving the functioning of the single market.

1.2. It is worth noting that e-CODEX is not limited to e-justice. In anticipation of the future, the EESC recommends including a provision to open up the possibility of other uses by other public administrations, including for example the transfer of e-health records.

1.3. The EESC recommends that the Commission include the scalability aspect within the scope of the regulation. Until now, e-CODEX has been operating in a few Member States that are the initial sponsors of this project. However, the current e-CODEX project needs to be scaled up and to continue to function smoothly across all Member States, as this is the intention of the proposed regulation.

1.4. The digitalisation of society, the economy and administration is accelerating and together represent an ambitious aim: a clear connection with this reality is needed. The e-CODEX system is a key component of the 'Digital judicial cooperation package' and the e-Justice digital service infrastructure, among other initiatives. Because it deals with justice and fundamental rights, the EESC considers that it must be linked with the overarching digital strategy 'Shaping Europe's Digital Future' (1), a key aspect that is not explicit in the regulation.

1.5. Given that eu-LISA is not a regulatory agency, the EESC believes that chapter 2 of the proposed regulation needs to address the transparency of the decision-making process, the involvement of Member States and other relevant stakeholders, and the necessary independence of decisions taken by the bodies involved in its governance.

1.6. As e-CODEX consists of a package of software products, which can be used to set up an access point for secure communication, guaranteeing a high degree of security must be a key objective in the regulation, understood as the need to establish security measures that protect the unfettered exercise of individual rights.

(1) COM(2020) 67 final.
1.7. One point which the EESC believes is deserving of greater attention is real and broad access to digital justice. The benefits of the e-CODEx system need to go beyond aspects related to improved management, operation and communication capabilities. The EESC believes that the development of digital justice must aim at ensuring that all citizens in the EU have secure, safe, reliable and easy access to justice.

1.8. The EESC points out the existing concerns raised by various stakeholders and Member States about whether the principle of independence of the judiciary will be sufficiently ensured in the permanent operation and further development of e-CODEx by eu-LISA.

2. Background and gist of the Commission proposal

2.1. The e-CODEx (e-Justice Communication via On-line Data Exchange) system was launched under the multiannual e-Justice action plan 2009-2013 (1), mainly to promote the digitalisation of cross-border judicial proceedings and to facilitate communication between Member States’ judicial authorities.

2.2. e-CODEx is the main tool for establishing an interoperable and decentralised communication network between national IT systems in cross-border civil and criminal proceedings. It is a software package that enables connection between national systems, allowing users, such as judicial authorities, legal practitioners and members of the public, to send and receive documents, legal forms, evidence and other information in a swift and safe manner. The e-CODEx system consists of a package of software products which can be used to set up an access point for secure communication.

2.3. The e-CODEx system is one of the key components of the Commission’s e-Justice policy to improve access to and the efficiency of justice in the Member States and is included in the Multi-annual European e-Justice action plan for 2019-2023 (2). It is also confirmed as the main tool for secure digital communication in cross-border judicial proceedings in the Commission’s Communication Digitalisation of justice in the European Union — A toolbox of opportunities (3). In the context of a digital single market that aims to provide high-speed, secure and trustworthy infrastructure and services, solutions for promoting e-Justice were part of the 2016 eGovernment action plan (4).

2.4. e-CODEx was developed by 21 EU Member States with the participation of other third countries/territories and organisations (5) between 2010 and 2016.

2.5. Currently the e-CODEx system is managed by a consortium of Member States and other organisations, financed by an EU grant.

2.6. The e-CODEx system needs to be managed in a way that does not call into question the independence of national judiciaries.

2.7. The Commission is putting forward a proposal for a regulation to establish the e-CODEx system at EU level, and is entrusting the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) with the system’s operational management. Stable governance for the e-CODEx system will make it possible to establish it as the default system for exchanging electronic messages for judicial cooperation at EU level. eu-LISA will not take over the management of the e-CODEx system before July 2023.

3. General comments

3.1. The EESC welcomes the proposed regulatory initiative, which needs to be supplemented by the European Parliament’s proposals. e-Codex will have indirect positive impact as it simplifies and speeds up cross-border judicial procedures and cooperation, which will also contribute to improving the functioning of the single market.

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(2) Regulation (EU) 2018/1726.
(3) COM(2020) 710 final.
(5) Jersey, Norway, Turkey, the Council of Bars and Law Societies of Europe (CCBE) and the Council of the Notariats of the European Union (CNUE).
3.2. Europe is a leading force in the digital transformation. e-CODEX is a catalyst for this transformation in Europe and in the Member States and, importantly, between them. It goes beyond functional IT needs, touching on key factors such as harmonisation, culture, human rights and other processes which need to be addressed by Member States in the digitalisation of society and the economy.

3.3. As this regulation allows citizens to benefit from improved cross-border access to justice, the EESC considers that it must also specifically address the necessary strengthening and harmonisation of Member States' capabilities in the field of judicial cooperation. This starts with the digital ecosystem underpinning e-CODEX, which must allow for an interoperable and interconnected environment. The EESC would like to point out that so far, uptake of IT on the part of the judiciary in Europe has been divergent. Hence the EESC calls for stronger cooperation among national justice departments and convergence across the EU at various levels, fully respecting the specific features of national systems including the roles and responsibilities of the various actors involved. On a technical level, it is necessary to guarantee that Member States have similar degrees of automation and the technical capacity to handle and store large electronic documents, as well as to interconnect service providers in a highly secure manner.

3.4. Enhancing trust in cross-border electronic interaction between citizens, businesses and public authorities is key. The impact of the regulation on electronic identification and trust services for electronic transactions in the European Single Market (eIDAS) on the e-CODEX infrastructure and functioning cannot be overlooked. As eIDAS regulates electronic signatures, electronic transactions, the bodies involved and their processes, the EESC observes that e-CODEX functions as an effective vehicle for communicating widely. Its infrastructure needs to operate in conformity with eIDAS requirements and to allow secure interoperability.

3.5. It is worth noting that e-CODEX is not limited to e-justice. In anticipation of the future, the EESC recommends including a provision to open up the possibility of other uses by other public administrations, including for example the transfer of e-health records. Using e-CODEX beyond e-justice will contribute to ensuring its long-term use and encourage Member States to make the necessary investment in their infrastructure. As this proposal regulates justice aspects only, in order to do so, different legislative proposals would be required.

3.6. The EESC supports the e-CODEX system as it enables secure electronic transmission of information and documents in cross-border civil and criminal proceedings. As the Commission notes, this regulation is needed for two main reasons: (1) to establish and provide for the long-term sustainability of the e-CODEX system; and (2) to entrust its management, further development and maintenance to the eu-LISA Agency. However, the EESC points out that effective governance of the digital judicial system requires both technical architecture that is sustainable and stable, as well as a robust governance infrastructure.

3.7. The EESC recommends that the Commission include the scalability aspect within the scope of the regulation. Until now, e-CODEX has been operating in a few Member States that are the initial sponsors of this project. However, the current e-CODEX project needs to be scaled up and to continue to function smoothly across all Member States, as this is the intention of the proposed regulation. The EESC highlights that it is the responsibility of each Member State to ensure that their national IT systems and infrastructure function well, are secure and that personal data and privacy are ensured.

3.8. The EESC calls upon the Commission to explore the possibility of helping entities operating outside the EU in particular in countries associated with the European Union to set up the e-CODEX system's package of software products. Broadening the scope of the project, which should be based on a clear model of co-funding, would bring benefits to all parties involved. The need to ensure the system's scalability and operationality should be taken into consideration.
4. Specific comments

4.1. Alignment and consistency with core European strategies

4.1.1. The digitalisation of society, the economy and administration is accelerating and together represent an ambitious aim; a clear connection with this reality is needed. The e-CODEX system is a key component of the ‘Digital judicial cooperation package’ and the e-Justice digital service infrastructure, among other initiatives. Because it deals with justice and fundamental rights, the EESC considers that it must be linked with the overarching digital strategy ‘Shaping Europe’s Digital Future’ (\(^7\)), a key aspect that is not explicit in the regulation.

4.1.2. In the view of the EESC, the forthcoming legislative initiative on Artificial Intelligence (AI), to be unveiled by the Commission in the spring of 2021 (\(^8\)), needs to specifically address the role of AI-based solutions in enabling e-justice solutions and the risks associated with the use of AI-based solutions by judicial authorities. These possible uses include ‘predictive justice’ and its challenges, the use of online dispute resolution platforms, and the use of algorithms in criminal investigations.

4.1.3. The EESC acknowledges that e-CODEX does not entail the use of AI. However, AI is used more and more in judicial systems. Hence, due to the indirect relationship, the EESC recommends that the first review of the Coordinated Plan on AI (\(^9\)), scheduled for the first quarter of 2021, address the connection between AI and digital justice and the e-CODEX system.

4.2. Effective e-CODEX governance and operational aspects of e-CODEX

4.2.1. Given that eu-LISA is not a regulatory agency, the EESC believes that chapter 2 of the proposed regulation needs to address the transparency of the decision-making process, the involvement of Member States and other relevant stakeholders, and the necessary independence of decisions taken by the bodies involved in its governance. For example, and because there will be a main potential user group of e-CODEX, the participation of lawyers could be included at both policy and implementation level to respond, for instance, to the need to ensure that e-CODEX supports an equal playing field in terms of accessibility for all parties and meets lawyers’ requirements. Judicial legal professionals should therefore be structurally involved and not only consulted.

4.2.2. On an operational level, the EESC underlines that some clarification is needed regarding, for instance, the strict delimitation of home affairs issues and the question of the ‘one-shop stop’. Formats for submitting and exchanging evidence between jurisdictions also need to be harmonised.

4.2.3. Concerning eu-LISA, the agency must be provided with both sufficient human and sufficient financial resources. To reinforce this point, the EESC reiterates its recommendation on the necessary training for eu-LISA staff (\(^10\)), particularly IT personnel, which should include a proper understanding of how the management of the e-CODEX system must ensure the independence of the judiciary and the right to a fair trial. This can be further developed in Article 13 of the proposed regulation.

4.3. High degree of security to protect rights and freedoms

4.3.1. As e-CODEX consists of a package of software products which can be used to set up an access point for secure communication, guaranteeing a high degree of security must be a key objective in the regulation, understood as the need to establish security measures that protect the unfettered exercise of individual rights (\(^11\)). The EESC also believes that the e-CODEX regulation must stress in Chapter 2 that there is a cooperation agreement in place between the eu-LISA Agency and the EU Agency for Cybersecurity (ENISA) (\(^12\)).

\(^1\) COM(2020) 67 final.
\(^5\) Opinion EESC-2020-05923 adopted during the plenary session of April 2021 (see page 76 of this Official Journal).
4.3.2. Digital solutions need to ensure a high level of privacy and data protection. A high degree of security also involves ensuring harmonised data protection at national level. The EESC reiterates the need for data controllers in the Member States to put in place appropriate technical and organisational measures, implement data protection principles in an effective manner and secure sufficient financial resources to enable this.

4.3.3. Security-related risks are increasingly unpredictable. The EESC recognises that risk assessment and risk mitigation lie at the core of eu-LISA’s annual planning, default operations and reporting cycle. The EESC believes that in addition to risk mitigation strategies and the mapping of ‘major risks’, eu-LISA could reinforce its framework by mapping possible risks with unexpected outcomes. This will make it a more resilient and anticipatory agency.

5. Compliance with fundamental rights

5.1. Access to digital justice for all, as a way to ensure equality and non-discrimination

5.1.1. One point which the EESC believes is deserving of greater attention is real and broad access to digital justice. The benefits of the e-CODEX system need to go beyond aspects related to improved management, operation and communication capabilities. The EESC believes that the development of digital justice must aim at ensuring that all citizens in the EU have secure, safe, reliable and easy access to justice. Equality of access needs to be at the heart of the regulation, so as to avoid discrimination and inequalities. The EESC recommends that the e-CODEX regulation better highlight the fact that citizens must genuinely benefit from equal and effective legal protection and access to e-justice and related digital services.

5.1.2. The benefits of the e-CODEX system must reach out and serve a larger public. In a border dimension, judicial and cross-border authorities are not the only stakeholders. The environment in which e-CODEX exists needs to integrate not only judicial authorities and e-CODEX access points, but also a multiplicity of actors: citizens, courts, court staff, other administrative and ICT staff, law enforcement agencies, notaries, digital forensic experts, lawyers and third parties who directly or indirectly benefit from the system.

5.1.3. Moreover, given the importance of the e-CODEX system in ensuring effective access of citizens and businesses to justice, reference to the protection of procedural rights should be included too.

5.2. Respect of the independence of the judiciary and the right to a fair trial

5.2.1. The independence of the judiciary is a cornerstone of the principle of the separation of powers and one of the essential principles of the rule of law. The use of technology should not sacrifice the consistent delivery of justice. For this reason, the EESC calls on the Commission to conduct a proper assessment as to whether the system used to interconnect national e-justice systems is capable of complying with the principles of a fair trial and due process. Such safeguards apply, in particular, in the event of a handover of e-CODEX to eu-LISA.

5.2.2. The EESC points out the existing concerns raised by various stakeholders and Member States about whether the principle of independence of the judiciary will be sufficiently ensured in the permanent operation and further development of e-CODEX by eu-LISA. Current provisions of the proposal mentioning the independence of the judiciary are not satisfactory. Given the importance of that principle, stronger wording is required. Furthermore, the EESC asks for clarification as to how the proposed governance structure of e-CODEX will effectively ensure this principle in practice.

5.3. Respect and reference to fundamental rights

5.3.1. The EESC underlines the fact that this regulation must respect fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union and the Member States’ constitutions. These include the right to security, the right to an effective remedy, and the principles of legality and proportionality. The EESC points out that protecting these rights also depends on the conditions under which these rights may be encroached upon, and who decides on this.
5.3.2. The use of digital technologies should not undermine the right to a fair trial and effective legal remedy. This is especially important as regards: equal opportunity for both parties to make their case (equality of arms); the right to have knowledge of/comment on all evidence and observations filed (adversarial proceedings); the right to a public hearing; in criminal proceedings, non-interference with the rights of the defence.

5.3.3. A specific reference to the applicability of Title VI: Justice of the Charter of Fundamental Rights of the EU, and to Article 47 thereof, must be included in the proposal.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Conclusions and recommendations

1. The EESC welcomes the Communication as an essential and effective step to enable the digitalisation of justice. It is crucial to support Member States at national level in making this change by providing them not only with the necessary funding, but also with tools. With this support, the digitalisation of justice can be expanded at European level to create mechanisms facilitating closer cross-border cooperation between judicial authorities.

2. The EESC notes that the picture across Member States is highly varied, with a diverse range of national IT tools in place, which means that certain mechanisms, such as e-CODEX (1), are not used in a consistent manner.

3. For the EESC it is therefore increasingly important to lay down rules for a more homogeneous approach among the Member States.

4. The EESC believes that the digitalisation of justice is a crucial tool for ensuring genuine cooperation between Member State authorities in combating criminal practices that severely damage the European area.

5. The EESC notes that some specific aspects of the Communication do not reflect the multifaceted reality of the judicial systems in the different Member States.

6. The EESC proposes that the Commission adopt a directive on judicial proceedings held at distance, providing for and accepting any means of contact by video call using any medium that guarantees the right to privacy and does not jeopardise the protection of the personal data of the individuals concerned or of the case in question.

7. The EESC does not believe that the use of other means of distance communication, which already exist, could jeopardise data protection itself, given that anyone can attend most court proceedings.

8. The EESC believes that when investigating a potential terrorist group in a Member State, the police must have instant access to the evidence gathered, not only in the databases of Europol, Eurojust and the European Public Prosecutor's Office (EPPO), but also in the databases of each Member State law enforcement authority.

(1) COM(2020) 712 final.
1.9. The EESC stresses the need to also make the most of the advantages of digitalisation for the possibility of enforcing judgments in other Member States, for alternative dispute mechanisms and for administrative cooperation between the Members States and EU agencies.

2. The Commission communication

2.1. This communication proposes a toolbox for the digitalisation of justice, in order to move the justice sector forward in the digital area. The proposed approach takes into account the Member States’ differing national circumstances and national competences, and fully respects the principles of subsidiarity and proportionality. At the same time, it is important that all Member States work towards reducing the existing digitalisation gaps and the fragmentation between national justice systems and leverage the opportunities available under the relevant EU funding mechanisms.

3. General comments

3.1. The COVID-19 crisis has caused considerable difficulties for the workings of the judicial system and for effective judicial protection. These include delays in the holding of in-person proceedings and in the cross-border serving of judicial documents, the temporary impossibility of obtaining personal legal assistance and the expiry of time limits due to delays. At the same time, the increase in the number of insolvency and dismissal cases linked to the pandemic is making the work of the courts even more difficult.

3.2. There is therefore a need for new measures to enable justice to be move more effectively and more swiftly towards digitalisation. It is essential to support Member States at national level by providing them not only with the necessary funding, but also with the tools to ensure that all judicial authorities and those working in the field of justice are prepared for this new era of change. It is crucial to make justice more accessible and to bring it closer to the citizens.

3.3. It is only with this support, at the domestic level, that the digitalisation of justice can be expanded at the European level, in order to create mechanisms facilitating closer cross-border cooperation between judicial authorities.

3.4. It should be noted that overall at the moment, the picture across Member States is highly varied, with a diverse range of national IT tools in place, which means that certain mechanisms, such as e-CODEX, are not used in a consistent manner.

3.5. It is therefore increasingly important to lay down rules for a more homogeneous approach among the EU’s Member States.

3.6. The communication primarily aims at further digitalising public justice services, promoting the use of secure and high-quality distance communication technology (videoconferencing), facilitating the interconnection of national databases and registers, and promoting the use of secure electronic transmission channels between competent authorities.

3.7. The digitalisation of justice is a crucial tool for ensuring genuine cooperation between Member State authorities in combating criminal practices that severely damage the European area, such as terrorism-related crimes, money laundering and corruption, human trafficking, hate crimes and incitement to engage in hate speech and violence.

3.8. These crimes are increasingly cross-border in nature, and the transition to digital therefore represents a huge — and essential — step forwards in the investigative and law-enforcement approach to these harmful activities.

3.9. Despite the enormous effort that the Commission has been making in this area, and even though the communication should be viewed very positively, the digitalisation of justice is a long and difficult process.

3.10. Some specific aspects of the Communication can be criticised, due to their shortcomings or to the failure to understand that the ideas put forward do not reflect the multifaceted reality of the judicial systems in the different Member States.
3.11. The Commission appears to have overlooked the arrangements for conducting trials and other judicial proceedings, in civil, commercial and labour law, as well as in criminal law (such as the questioning of defendants and the interviewing of witnesses during a criminal investigation), allowing those involved to take part remotely, either by means of applications available on the market or by video calls using communication apps.

3.12. The EESC understands the need to respect the conventions of justice, but the COVID-19 crisis has helped us see that videoconferencing does not necessarily have to be carried out through existing mechanisms for interaction with the courts (whether at national or international level), with those involved in proceedings present in the courts in the area where they live or in venues previously designated and authorised (such as police facilities, the premises of forensic agencies and others). This is because contact with witnesses may take place via computer or mobile phone, irrespective of their location.

3.13. Nowadays, there are already certain means of distance communication that make it possible not only to guarantee the right to privacy, but also data protection — a key issue that must, of course, be safeguarded.

3.14. It should be noted that the principle of public access applies to most judicial proceedings. Thus, at court proceedings open to the public, there might be not only the relatives and friends of the various parties involved (plaintiffs and defendants in civil, commercial and labour law proceedings, or witnesses and defendants in criminal proceedings), but also other individuals who have no interest in the proceedings, and even in many cases journalists and other media workers.

3.15. The EESC does not therefore believe that the use of other means of distance communication, such as computer platforms or other duly certified digital applications, which already exist, could jeopardise data protection itself, when in fact anyone can attend most court proceedings.

3.16. Moreover, and especially in criminal procedural law, defendants too should have the option of being heard by means of distance communication rather than having to appear in person in court, if there are no specific exceptions justifying the appearance of the defendant in person in court.

3.17. With regard to witnesses, steps must be taken to ensure that a person with a physical disability, living in a small village, where the nearest court is located many kilometres away, does not have to leave the comfort of their home to spend hours in a court-house waiting to be called to give their witness statement, because there are reliable and certified electronic platforms that guarantee security and confidentiality in the exchange of information and the deposition of witness statements at a distance.

3.18. In this communication, the Commission proposes ‘promoting the use of secure and high-quality distance communication technology (videoconferencing)’.

3.19. Consequently, and in line with the above, the EESC proposes that the Commission adopt a directive on judicial proceedings held at distance, providing for and accepting any means of contact by video call using any medium (e.g. a desktop computer, laptop or even mobile phone) that guarantees the right to privacy and does not jeopardise the protection of the personal data of the individual concerned or of the case in question.

3.20. This is consistent with the Commission’s 2020 Strategic Foresight Report, which concludes that the digital transition in justice should put citizens first and should create new opportunities for the different stakeholders, helping to reduce delays, increase legal certainty and make access to justice cheaper and simpler.

3.21. This situation should, however, be closely monitored where minors and vulnerable persons are concerned, and in cases dealing with crimes of hate or of a sexual nature — where the need to ensure legal privacy and security is greater and, in fact, essential.
3.22. In the communication, the Commission expresses its concern about the development of a standard template for access to the case-law of national courts in machine-readable format — a European Case-Law Identifier.

3.23. This proposal deserves full support but, in order to be completely effective, may require a legislative complement in the sense of the formal standardisation (not of substance) of court sentences.

3.24. As we know, each Member State has not only its own legislation but also its own system of conventions. The structure and content of a judgment in Portugal will by no means be the same as in Italy or France and such differences should therefore be duly considered by the Commission.

3.25. The Commission also proposes setting up an IT platform for collaboration through joint investigation teams (bringing together Member States’ investigators and prosecutors, if necessary with the support of Europol, Eurojust and the EPPO). Access to available data and databases in Member States should be limited to the competent authorities, complying with data protection requirements.

3.26. This is an excellent proposal that could, however, be hampered by the lack of standardisation of rules in the various Criminal Procedure Codes of the Member States, which govern all matters relating to the taking of evidence.

3.27. Until such standardisation has taken place, there is a possibility that certain investigative procedures may lead to cases being declared invalid according to the legislation of some Member States, thus undermining the effectiveness of joint investigations.

3.28. The fight against terrorism is one of the Commission’s concerns in this communication. As well as stating the need for a legislative proposal on the exchange of cross-border digital terrorism proceedings, however, it is essential to create and implement tools based on digital interconnection for the exchange not only of proceedings but also of information on suspects and on the activities of groups under surveillance (2).

3.29. Given the need to curb terrorism, the EESC believes that when investigating a potential terrorist group in a Member State, the police must have instant access to the evidence gathered, not only in the databases of Europol, Eurojust and the EPPO, but also in the databases of each and every Member State law enforcement authority. However, care must be taken to ensure that the information is not transmitted to unauthorised or untrusted persons.

3.30. The provision of online services, such as the renewal of ID cards, electronic judicial certificates, permanent civil status certificates or even criminal records, or online consultations of court cases, should also be ensured because, as well as reducing travel to the physical locations of the services, it also means that those services can be provided even when the physical locations are closed.

3.31. However, with regard to the interconnection of data (specifically data relating to companies, insolvencies, building and business registers and criminal records) efforts must be made to ensure that access to this data cannot, in some cases (concerning data from criminal records, for example), jeopardise the right to privacy or the protection of personal data.

3.32. It is therefore essential that the IT model in this field be studied particularly thoroughly to ensure that the desired digitalisation does not work against citizens and does not undermine their fundamental rights.

3.33. In the communication, the Commission details the creation of an instrument called My e-Justice space, which is intended to give individuals electronic access to judicial documents (in national cases or in cases pending in other Member States) which they or their legal representatives are allowed to consult and/or obtain.

(2) See EESC opinion (OJ C 110, 22.3.2019, p. 67).
3.34. The possibility of digital access to information relating to cases in which an individual is involved is a very important aspect of creating genuine judicial transparency, which is an essential tool for people to feel that justice is not opaque or inaccessible, and for promoting access to justice more quickly and effectively, with fewer associated costs.

3.35. The fact that judicial authorities and lawyers themselves can have electronic access to cases tried in another Member State is a huge and very important step in the proposed digitalisation of justice.

3.36. However, in view of the differences between the various Member States as regards the scope of judicial confidentiality in criminal proceedings, without harmonisation of national laws in this area, this excellent Commission proposal will certainly be compromised when it comes to cross-border registers.

3.37. The desired digitalisation of justice must offer the EU citizen new and substantial opportunities to settle disputes in a cross-border context. This is the only way to achieve the objective of expanding people’s right of access to justice.

3.38. In this respect, the Commission notes, for example, the creation of (digital) means to trigger cross-border claims and the possibility of cross-border enforcement of the delivery of support payments for minors under parental responsibility.

3.39. However, in its Communication the Commission has overlooked a truly fundamental issue, namely the possibility of enforcing judgments in other Member States. Digitalisation offers the means to put this objective into practice, which is a long-standing demand of many legal professionals. It should be noted that in several areas (commercial law and family law) the situation in question is already provided for, so it needs to be extended to the areas not yet covered.

3.40. It has long been established that rulings are inevitably issued by the courts of each Member State and, in this area, the sovereignty of the Member States of the European Union must be regarded as inviolable.

3.41. However, the fact is that the final recipients of many rulings are goods, businesses or citizens located outside the country where the ruling was issued.

3.42. In such cases, the borders between the Member States are obstacles to the speedy implementation of justice, and intra-Community judicial cooperation should therefore take advantage of the opportunities offered by digitalisation so that judgments are enforced directly in the country where the property they concern is located.

3.43. The same applies to the mechanisms for alternative dispute resolution, which should also be allowed to take place online, including the activities of arbitration centres, magistrates and public mediation schemes.

3.44. As regards cooperation between national authorities and EU agencies and bodies in fighting cross-border crime, the Commission rightly identifies the need to strengthen capacities for digital cooperation.

3.45. However, despite the expectation that the Commission communication would set out the model to be adopted and the investments it would be willing to make to achieve this important objective, the result is nothing more than the vain hope that Eurojust, the EPPO, OLAF (European Anti-Fraud Office) and Europol ‘agree on a common approach that ensures smooth and secure cooperation with Member States (…)’.

3.46. In such an important area, however, the Commission must set a time limit for establishing a model of cooperation and, rather than simply hoping that the institutions will arrange matters among themselves, it must commit to creating an instrument (possibly a directive) in order to impose here, too, a mechanism based on the potential of digitalisation.
3.47. The Commission's declaration of intent in this communication is welcome as regards financial support for Member States to develop appropriate IT systems and to draw up a strategy for the digitalisation of justice in the EU under the new Justice Programme and the Digital Europe programme.

3.48. It should be noted that the main obstacle to digitalisation is not the judicial authorities or citizens, but the lack of Member State resources to put in place the requisite measures to create and implement digital platforms and electronic systems in the area of justice.

3.49. Thus, and especially in the face of the current crisis — which has dealt a sudden shock to Member States’ economies, affecting not only the short term but also the long term — funding solutions for these countries are urgently needed so that the digitalisation of justice can be achieved with the necessary harmony and uniformity. Only then can cross-border cooperation be achieved at European level.

3.50. It is also worth noting the concern expressed by the Commission that this important objective of using the digitalisation process to achieve an area of freedom, security and justice within the EU should harness the resources that will be made available under the Recovery and Resilience Facility.

3.51. It is also reassuring to note the Commission's view that the Technical Support Instrument, arising from a proposal for a Regulation of the European Parliament and of the Council, will support all Member States in implementing reforms in the justice sector, which will of course involve the investment referred to above in the digital transition.

3.52. As the Commission considers that the current, paper-based form of cross-border cooperation has many shortcomings that have a negative impact on the efficiency and costs of legal proceedings, it is essential that electronic transmission become the default medium for communication and exchanges of documents.

3.53. It would be feasible to set up a decentralised IT system to link national systems so that documents can be shared electronically more quickly and securely. To this end, data protection and privacy should be taken into account when transmitting documents and gathering evidence.

3.54. Making the use of electronic court proceedings universal, promoting paperless communication between courts and other bodies and services, and having procedural documents delivered by legal representatives in a variety of multimedia formats are essential measures for digitalising justice.

3.55. The Commission's attention should also be drawn to the importance of providing legal practitioners with the tools they need to implement the intended measures, through training in the digital sphere and specialist courses in the use of certain electronic applications and platforms, which will inevitably also entail costs.

3.56. However, an exception must be made for Member States subject to proceedings for infringing fundamental rights or for breaches of the rule of law:

a) they should not benefit from EU funding; and

b) not all information should be shared with them because their courts, their judicial system and their police authorities cannot be trusted anymore.

3.57. Current transformation efforts provide a solid basis for making greater use of technological capabilities through emerging technologies to build a digitally empowered and people-centred justice ecosystem.
3.58. The EESC has high hopes that the legislation will be amended to enable the much-anticipated transition of justice into the digital era, to include acceptance of electronic identification for the digital transmission of judicial documents and the admissibility of electronic or electronically transmitted documents as evidence in court proceedings.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘Amended proposal for a Regulation of the European Parliament and of the Council on health technology assessment and amending Directive 2011/24/EU’

(COM(2018) 51 final — 2018/18 (COD))

(2021/C 286/17)

Rapporteur: Dimitris DIMITRIADIS

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(for/against/abstentions) 227/0/5

1. Conclusions and recommendations

1.1. The EESC welcomes the action of the Portuguese Presidency of the Council of the EU in obtaining a mandate (’) from the Member States to start negotiations with the European Parliament on a legislative proposal concerning health technology assessment (HTA) for the benefit of patients.

1.2. The EESC agrees that evidence-based processes like HTA, which is a key driver for socioeconomic growth and innovation in the Union, can cover both clinical and non-clinical aspects of a health technology and that this can be achieved through cooperation between Member States at Union level, aiming at a high protection of health for patients and ensuring the smooth functioning of an inclusive Single Market.

1.3. The EESC stresses that the regulation on health technology assessment, once adopted, will be a major step forward in the field of healthcare and will pave the way for a strong European Health Union that will improve and safeguard the health of all citizens.

1.4. The EESC draws attention to the fact that the mandate refers to health as a market, whereas health is a common good and should be addressed from a general interest point of view.

1.5. The EESC recognises that HTA could play a key role in providing equitable and sustainable healthcare.

1.6. The EESC endorses the Commission’s decision to opt for the legal route of a regulation as opposed to another legal instrument, since this will ensure more direct and more effective cooperation at Member State level (’) as well as between Member States, from a European perspective.

1.7. The EESC believes that the ageing of Europe’s population is likely to increase in the coming years. Furthermore, the prevalence of chronic diseases, pandemics and the advent of complex new technologies will increase the need for investment in healthcare systems, whereas Member States are facing ever-greater budgetary constraints.


(’) https://www.eesc.europa.eu/el/our-work/opinions-information-reports/opinions/health-technology-assessment
1.8. The EESC would support the use of tax incentives in certain Member States, as well as possibly revising upwards the ‘de minimis’ State aid threshold.

1.9. The EESC believes that the Member States should support and finance ideas of new health technologies and any relevant initiatives coming from start-ups.

1.10. The EESC agrees with the initiative of introducing increased coordination on HTAs by submitting one dossier, and endorses a progressive implementation timeline, but it points out the absence of special provisions for SMEs.

1.11. The EESC is concerned about the timelines set for implementation and especially the delayed application of three years and believes that, for the benefit of patients and cost-effectiveness, this could be shortened.

1.12. The EESC recommends that the Regulation mention preventive measures that will have a significant impact on patients, such as directive guidance for hospitals in monitoring hospital-acquired infections and in their prevention and reduction, and that its scope be broadened/supplemented to include such measures as part of unmet medical needs.

1.13. The EESC emphasises that in order to fulfil the promise of digital health and care, of which HTA is part, the involvement of civil society (notably of social economy organisations and patient organisations) is crucial.

2. Background

2.1. The proposal for a Regulation follows over 20 years of voluntary cooperation in the sphere of health technology assessment (HTA). After the adoption of the cross-border healthcare Directive (Directive 2011/24/EU) (3), a voluntary HTA network of national HTA bodies and institutions was set up in 2013 to provide strategic and political guidance for scientific and technical cooperation at EU level.

2.2. These activities were complemented by three successive joint actions (4) on HTA, which gave the Commission and the Member States the opportunity to establish a solid knowledge base of information and the methodologies for assessing health technologies.

2.3. The EESC recognises that health systems and the HTA process are rooted in national traditions and cultures. As European citizens, however, we strongly believe that we will only overcome future health challenges and benefit from future opportunities in healthcare through effective collaboration at European level.

2.4. The principle of setting up a prospective analysis, in particular by means of ‘Horizon scanning’, should be promoted to allow the early European — national identification of emerging health technologies that are likely to have a major impact on patients, public health and healthcare systems. Such a prospective analysis could be used to support the coordination group in planning its work.

3. Problems and lacunae which the proposal is intended to address

3.1. The EESC agrees with the conclusion that emerged after extensive consultation to the effect that access to the market in innovative technologies has to date been impeded or even distorted owing to different national or regional bureaucratic procedures, methodologies and requirements with HTA that exist throughout the EU and are imposed by various national rules and practices. This is why the Commission had to put forward a proposal for a regulation as the most appropriate legal approach (5).

3.2. Similarly, the EESC agrees that the current situation is contributing to a lack of business predictability, with higher costs for industry and SMEs, which leads to delays in accessing new technologies and has negative effects on innovation. An example of the current situation without harmonisation can be found in the paper by the think tank I-Com, Institute for Competitiveness (6). On page 49, the paper reports, with reference to BEUC (the European Consumer Organisation): ‘Some HTA bodies make the assessments publicly available, directly or upon request, while some others consider them confidential. Moreover, observational studies to assess the value of a drug are accepted by some HTA bodies but rejected by others’. As decades of EU cooperation based on HTA projects have shown, these questions have not been adequately addressed through the purely voluntary approach to the joint work that has been conducted to date.

3.3. The initiative will effectively address the current fragmented landscape of national HTA systems (diverging procedures and methodologies that affect market access), bearing in mind that the reliability of any new mechanism will be guided by the principles of independent and free expression for the parties involved, based on scientific, ethical and impartial criteria and that the objectives can be adequately achieved through enhanced HTA cooperation at EU level following these principles. While strengthening cooperation at other levels that are essential to HTA (for example, in those Member States experiencing difficulties owing to the lack of patient registries), the national action plans for all health conditions will have to be deployed so as to accelerate the work of the relevant health ministries, taking into account the best practices of other Member States. This approach also incorporates social values and priorities into the scientific decision-making procedure.

3.4. The EESC points out the need to support health-sector technological innovation to also cover non-hospital care at local level. As populations age (7), chronic diseases become more prevalent and more people find themselves unable to live independently. Specialisation is needed, as are ever more effective use of technologies and treatment methods for home care. To this end, dedicated HTA programmes should be encouraged, aimed at improving care and assistance in the home, not only through the use of new technologies and telemedicine, but also through increased quality of services generally across the care sector.

4. What is this specific proposal intended to achieve?

4.1. The proposed objective of EU Regulation on HTA is, among others, to make sure that the mechanism that ensures clinical assessments is submitted only once at Union level to promote the availability of innovative health technologies to patients in Europe and to make better use of available resources, while improving business predictability.

4.2. The EESC endorses the Commission’s decision to opt for the legal route of a regulation as opposed to another legal instrument, since this will ensure more direct and more effective cooperation at Member State level, as well as between Member States, with a European approach.

4.3. The proposal for a regulation is also intended to ensure that the methodologies and procedures applied in HTA are more predictable across the EU and that joint clinical assessments are not repeated at national level, thus avoiding duplication and divergence. The preferred option is considered to provide the best combination of efficiency and effectiveness in reaching the policy objectives, while also respecting the subsidiarity and proportionality principles. It represents the best possible means of achieving the internal market objectives.

4.4. The EESC agrees that the proposal provides the Member States with a sustainable framework, allowing them to pool expertise, reinforce evidence-based decision-making and supporting them in their efforts to ensure the sustainability of national health systems. The preferred option is also cost-efficient in the sense that the costs are significantly outweighed by savings for Member States, industry and SMEs, as a result of pooling resources, avoiding duplication and improving business predictability. The proposal contains provisions on the use of common HTA tools, adopting a progressive implementation of the scope, starting with cancer drugs, orphan drugs and advanced therapy medicinal products (ATMP) and establishes the four pillars for the joint work of the Member States at EU level, such as joint clinical assessments, joint consultations, the identification of emerging health technologies and voluntary cooperation.

(*) http://www.astrid-online.it/static/upload/7787/7787e169a70a06c63221153a6636c63f.pdf
4.5. The EESC, while agreeing with a detailed timeline implementation, considers that the significant role of AI, together with digital transformation, have changed the landscape of health and care offering speedy treatment strategies. Thus, the EESC is concerned about the set timelines for implementation and especially the delayed application of three years as outlined in Article 5.2(b) and believes that for the benefit of patients and cost-effectiveness, this could be shortened.

4.6. A patient-centred approach is the only way to ensure that healthcare is adequate and relevant. For this reason, the role of patients, caregivers, the social economy and patient organisations should be taken into account in the proposed stakeholder network, the coordination group and in any clinical assessments. We support the European Patient Forum’s (EPF) call for mandatory and meaningful involvement of the patient community in order to ensure HTAs are conducted in the interest of patients.

5. What legislative and non-legislative options were considered? Is there a preferred option?

5.1. The EESC considers the proposal for a Regulation to be in line with the general objectives of the EU, including the smooth functioning of the internal market, sustainable healthcare systems and an ambitious research and innovation agenda.

5.1.1. As well as being consistent with these political objectives of the EU, the proposal is also compatible with existing EU Treaties, legislation governing medicinal products, in vitro diagnostic medical devices and medical devices. For instance, although the regulatory process and the HTA process will remain clearly separated due to their different purposes, there are opportunities to create synergies, through mutual information-sharing and better alignment of the timing of procedures between the proposed joint clinical assessments and the centralised marketing authorisation for medicinal products.

5.2. The legal basis of the proposal is Articles 114 and 116 of the Treaty on the Functioning of the European Union (TFEU).

5.2.1. Articles 114 and 116 TFEU allow for the adoption of measures to approximate the provisions laid down by law, regulation or administrative action in the Member States, provided they are necessary for the establishment or functioning of the internal market while at the same time ensuring a high level of public health protection.

5.2.2. The proposal must also comply with Article 168(7) TFEU, under which the responsibilities of the Member States for defining their health policy and for organising and delivering health services and medical care are respected by the Union.

5.2.3. Even though it is very clear that the EU's Member States will continue to be responsible for assessing non-clinical (e.g. economic, social or ethical) domains of health technology and for taking decisions about pricing and reimbursement, the EESC suggests looking into and carrying out a separate study on a common EU pricing policy — with the aim of ensuring transparency and access for all citizens — for medical products, medical devices and in vitro diagnostics medical devices, and those which have undergone HTA in particular, with the aim of improving access for all European citizens and avoiding parallel exports or imports based solely on price. This would support the relevant national committees on the price-list registries or observatories (which set price ceilings) that exist in certain countries, particularly as regards medical devices.

5.3. Although the term “health technology” is to be understood in a broad sense, comprising medicinal products, a medical device and in vitro diagnostics medical device or medical and surgical procedures, as well as measures for disease prevention, diagnosis or treatment used in healthcare, the scope of joint clinical assessments is limited to: medicinal

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(8) See footnote 1.
(11) The need for improved synergies is also recognised by the Member States in the HTA Network Reflection Paper Synergies between regulatory and HTA issues on pharmaceuticals and by EUnetHTA and the EMA, in their joint Report on the implementation of the EMA-EUnetHTA three-year work plan 2012-2015.
products undergoing the centralised marketing authorisation procedure, new active substances and existing products for which the marketing authorisation is extended to a new therapeutic indication, and certain classes of medical devices and in vitro diagnostic medical devices for which the relevant expert panels established in accordance with Regulations (EU) 2017/745 (12) and (EU) 2017/746 (13) have given their opinions or views and which have been selected by the coordination group set up under the present Regulation.

5.4. As part of efforts to prevent degenerative diseases, and also to reduce inappropriate hospital admissions of older people who are not able to look after themselves, measures should be introduced to improve the quality of healthcare and social care and thus improve patient safety and well-being.

5.4.1. The EESC believes that action should be taken and measures introduced to support hospitals in monitoring hospital-acquired infections and in their prevention and reduction, and that the scope of the regulation should be broadened to include such measures, which can be very useful in cases of pandemics such as the current one. This specific example concerns the approximately 37,000 (14) people who die every year in Europe of hospital-acquired infections. There is an urgent need to improve the safety of patients and the quality of the health services provided, focusing on prevention of hospital-acquired infections and the appropriate use of antibiotics.

6. How much will the preferred option cost?

6.1. The EESC believes the preferred option to be cost-efficient, as the costs are significantly outweighed by savings for the Member States and industry (15), as a result of pooling resources, avoiding duplication and improving business predictability.

6.2. The EESC supports the concept of sufficient funding for joint work and voluntary cooperation on HTA between Member States in areas such as the development and implementation of vaccination programmes in order to ensure that sufficient resources are available (16) for the joint work provided for in the proposal for a regulation, and for the support framework underpinning these activities.

6.3. The EESC suggests, to ensure efficiency with regard to costs and time, that the coordination group composed of Member States representatives could cover more than one and maximum three issues, working in parallel, i.e. one for cancer drugs, orphan drugs and ATMP, one for all other drugs and one for in vitro diagnostic medical devices and medical devices. The decisions taken by such science-based bodies should be reflected by simple majority voting.

6.4. Total EU expenditure on healthcare (public and private) amounts to around EUR 1.3 trillion annually (17) (including EUR 220 billion for medicinal products (18) and EUR 100 billion for medical devices (19)). Thus, healthcare spending represents on average around 10% of EU GDP (20).

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(14) http://www.cleoresearch.org/en/
(16) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018SC0041 the total cost of the preferred option has been estimated at around EUR 16 million.
(17) Eurostat data. From the Commission Staff Working Document Pharmaceutical Industry: A Strategic Sector for the European Economy, DG GROW, 2014. Eurostat, healthcare expenditure for all the Member States, 2012 or most recently available data. The figure is complemented by WHO health data for the following countries: IE, IT, MT and UK (ECB annual exchange rate).
6.5. The EESC believes that the factor of increased ageing, along with the greater prevalence of chronic diseases and pandemics, reinforce the need for investment in health systems and healthcare, while at the same time Member States are also facing ever greater budgetary constraints.

6.6. The EESC also anticipates that these developments will oblige Member States to further improve the efficiency and efficacy of healthcare budgets by focusing on powerful health technologies while at the same time maintaining incentives to innovate (21).

6.7. The EESC would support the use of tax incentives in certain Member States, as well as possibly revising upwards the ‘de minimis’ State aid threshold. One proposal to consider is to look at the possibility of revising upwards the ‘de minimis’ State aid threshold from the current EUR 200 000 to at least EUR 700 000 for SMEs operating in the health and social care sectors, and introducing additional quality requirements such as operating on the basis of projects involving several enterprises, investing in research and innovation, or reinvesting all profits back into the company. These measures could be useful for encouraging SMEs and social economy enterprises to invest more in research and innovation and for developing network-based cooperation (22).

6.8. The EESC believes that public funding is very relevant for HTA, and certainly this could be strengthened through cooperation on joint work by avoiding the duplication of efforts. Each national HTA is estimated to cost around EUR 30 000 for national bodies and EUR 100 000 for the healthcare sector (23). If, for example, ten Member States carried out an HTA for the same technology and their work were covered by a joint report, a saving of 70% could be achieved, even on the assumption that the increased need for coordination would make a joint assessment three times more expensive than one national report. Those resources could be saved or re-allocated to other HTA activities. However, given the very high cost of new technologies, it is crucial that the HTA used by a Member State to decide on reimbursement of a technology should be in line with that Member State’s therapeutic armoury. For cancer treatments, for example, the costs of which are usually in excess of EUR 100 000 per patient, an inappropriate clinical assessment will have a far greater cost than the amounts saved by the joint assessment. It is important to mention that: ‘the European Cancer Patient Coalition (ECPC) welcomes the proposal. By avoiding duplication of efforts, joint clinical assessments would remove the risk of diverging results and thus minimise the delays in access to new treatments’ (24). In addition, the International Association of Mutual Benefit Organisations (AIM, an international organisation of healthcare NGOs) ‘is pleased to see that the European Commission proposes to give HTA collaboration at EU level a more permanent status’ (25).

6.9. With enormous economic interests, the health technology sector is prone to conflicts of interest so it is very important that HTA is organised in an objective, independent, robust and transparent manner, as indicated in the proposal.

7. How will SMEs and micro-businesses be affected?

7.1. The EESC believes that the proposal should benefit SMEs, as well as social economy enterprises operating in the sector, since the clinical assessment report will be based on a dossier of complete and up-to-date information, thus reducing the administrative burden and the compliance costs associated with submitting multiple dossiers to meet the various demands of national HTAs. This will increase SMEs’ participation, and the EESC, therefore, regrets the absence of special incentives and support for enterprises engaged specifically in providing local welfare services.

(21) DG ECFIN, Cost-containment policies in public pharmaceutical spending in the EU, 2012.
(22) Currently, Commission Regulation (EU) No 1407/2013 limits the amount of State aid that may be granted to a company to EUR 200 000 over three years, including in the form of tax breaks. In 2008, under the European Economic Recovery Plan, the EU temporarily raised the ceiling to EUR 500 000 in response to the economic crisis. It should be recognised that the impact on health systems of the growing demand for healthcare services, particularly those related to people not being able to live independently, will be one of the main items of expenditure for Member States’ health systems. It would therefore be useful to provide for a special system of incentives and support for enterprises engaged specifically in providing local welfare services.
provisions for SMEs. In particular, the joint clinical assessments and joint scientific consultations provided for will increase business predictability for the sector. This is especially relevant for SMEs and social enterprises, which generally have a smaller portfolio of products and limited own resources and capacity for HTA. It is worth noting that the proposal does not envisage fees for joint clinical assessments and joint scientific consultations, which is also very significant with respect to employment (i.e. reducing unemployment). Improving business predictability through joint work on HTA across the EU is expected to have a positive effect on EU competitiveness in the health technology sector.

7.2. A real socioeconomic incentive for SMEs would be to encourage their participation in European development funding programmes under the National Strategic Reference Frameworks (NSRFs) beyond 2020. The 2014-2020 NSRFs contained specific provisions for research and development aimed at reducing poverty and unemployment.

7.2.1. The EESC believes that these programmes should be not just maintained, but also expanded within the broader framework of principles of the proposal for a regulation and that they should serve to incentivise research, development and creativity.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
1. Conclusions and recommendations

1.1. The EESC supports the general objective pursued by the Commission proposal, since ensuring legal certainty and predictability with regard to the VAT Directive (1) is crucial to creating a level playing field across Member States and to further promoting the single market.

1.2. The ongoing divergences between Member States, with regard to both the interpretation and implementation of the VAT Directive, are undoubtedly harmful to the single market, as pointed out by the Commission. The EESC therefore urges swift and effective action in this respect.

1.3. More uniformity of the VAT rules could indeed reduce compliance costs and be conducive to growth for all enterprises operating in the EU and, especially, for SMEs working on a transnational basis, as they are more impacted by regulatory differences between Member States.

1.4. Discrepancies with regard to the application of the VAT rules can bring about significant adverse distortions across the internal market and, as a consequence, negative social effects which should be prevented by ensuring more consistency in the application of the existing rules.

1.5. However, the EESC cannot refrain from noting that the Commission proposal, and in particular the proposed outline of issues to be addressed under the new set of rules might come up against significant resistance from many Member States, which could likely raise ‘principled objections’ to the Commission proposal.

1.6. The EESC therefore calls for the consideration of other measures able to improve the single market as early as possible. In the current political environment, the EESC suggests that the Commission, as a first step, consider improving and strengthening the existing advisory Committee on VAT and its decision-making process, in order to enhance the unsatisfactory degree of uniformity of VAT rules across Member States.

1.7. Moreover, the EESC considers it useful to duly trace heterogeneous applications and implementations of agreed VAT rules at national level. It is important to make the existing differences transparent, clear and public in order to improve uniformity under the current regulatory framework.

1.8. This approach might result in an effective system of ‘peer pressure’, making it much harder for Member States to deviate from consolidated interpretations and implementation practices to the detriment of the internal market.

1.9. The EESC furthermore considers it important that the Commission carry out impact assessments of any differences in the implementation or interpretation of agreed VAT rules in any Member State. The impact assessments should be made public, duly discussed and followed up within the VAT committee.

1.10. The EESC would finally like to draw attention to some possible unwanted effects of the new proposal. The proposed implementing role for the Commission, in relation to some of the main concepts within the VAT Directive, could make it difficult to distinguish between the scope of the Commission’s new powers, on one hand, and what will actually constitute a modification of the VAT Directive, on the other. Such uncertainty might possibly prevent the achievement of the necessary unanimous agreement to modify the VAT Directive within the Council in the future.

2. The Commission proposal

2.1. The legislative proposal under examination points out that the Commission has currently no implementing powers with regard to the VAT Directive. In this respect, the only available tool to implement the Directive’s provisions is the Advisory Committee set out in Article 398.

2.2. The Advisory Committee is made up of representatives of the Member States and of the Commission, and it is in charge of examining matters relating to the application of EU VAT provisions raised by the Commission or by a Member State. The Advisory Committee can currently only agree non-binding guidelines on the application of the VAT Directive, while binding implementing measures can be adopted by the Council, based on a Commission proposal.

2.3. According to the Commission, the existing guidelines do not always ensure a uniform application of the EU VAT legislation, also due to the demonstrated difficulties in reaching unanimous guidelines within the Advisory Committee. As to the matter at hand, the Commission lists several examples of failures to reach a unanimous agreement on rules and principles concerning the strategic provisions and concepts contained in the VAT Directive.

2.4. The Commission further argues that such discrepancies might result in several adverse outcomes including: (i) a risk of double taxation or no taxation; (ii) legal uncertainty and a lack of predictability; and (iii) additional costs for businesses. In this respect, although useful, the Case law of the European Court of Justice (ECJ) would not be, according to the Commission, an optimal solution to avoid all of the uncertainties stemming from the VAT Directive provisions.

2.5. Therefore, in order to improve legal certainty and predictability, the legislative proposal envisages empowering the Commission to adopt implementing acts in certain areas covered by the VAT Directive, as well as the creation of a committee that will oversee the Commission’s new powers.

2.6. The proposed implementing role of the Commission will focus on those specific areas and concepts related to EU VAT that require uniform application and where more certainty and predictability are needed. The Council, in turn, will keep its implementing powers outside of the Commission’s prospective remit.

2.7. In particular, the new rules maintain that the Commission, by means of implementing acts, will determine the meaning of the terms used in the following areas/concepts of the VAT Directive: (i) taxable persons for the purposes of VAT; (ii) transactions that are taxable for VAT purposes; (iii) the place of taxable transaction; (iv) chargeable event and the chargeability of VAT; (v) taxable amount of VAT; (vi) exemptions from VAT; (vii) deductions from VAT; (viii) obligations of taxable persons and certain non-taxable persons; and (ix) special schemes of the tax.

2.8. The legal ground of the proposal is Article 113 TFEU, which enables the Council — acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee — to adopt provisions for the harmonization of Member States’ rules in the area of indirect taxation.
2.9. According to the proposal, the assignment of implementing powers to the Commission will not rule out a general control by Member States on the Commission’s exercise of those powers.

2.10. A dedicated Committee is established by the new rules. The provisions on the composition of and chairperson for the committee are directly laid down in Article 3 of the Comitology Regulation.

3. General and specific comments

3.1. The EESC welcomes and supports the general objective pursued by the Commission proposal. Ensuring legal certainty and predictability with regard to the VAT Directive is of paramount importance for creating a level playing field and promoting a single market.

3.2. The current divergences between Member States, as far as implementing acts are concerned, are harmful to the single market, as pointed out by the Commission. Moreover, the regulatory framework is made even more complicated by the fact that not only implementing acts might diverge, but also the interpretation of VAT Directive rules and concepts in the first place.

3.3. More uniformity of the VAT rules could indeed reduce compliance costs and be conducive to growth for all enterprises operating on the internal market and, especially, for SMEs working on a transnational basis. The consolidation of the internal market itself might substantially benefit from more consistency across Member States in the field of VAT.

3.4. There are numerous examples of harmful differences in the implementation of agreed VAT rules. For instance, there is no shared consensus and interpretation on whether a ‘warehouse’ is a ‘fixed establishment of a taxable person or otherwise’ or on the meaning of the expression ‘supplier who dispatches or transports the goods either himself or through a third party acting on his behalf’, under Article 36a(3) of the VAT Directive.

3.5. The EESC points out that discrepancies in the application of the VAT rules can bring about significant adverse distortions across the internal market and, as a consequence, negative social effects which are unacceptable and should be prevented by ensuring more consistency in the application of the existing VAT rules.

3.6. However, the EESC cannot refrain from noting that the Commission proposal might come up against significant obstacles, posed by several Member States, in relation to agreeing which issues should be dealt with under the new set of rules and the existing rules concerning a change to VAT directives. The EESC therefore calls for the consideration of other measures that could enhance the single market as early as possible.

3.7. In the current political environment, the EESC suggests that the Commission, as a first step, consider improving the existing Advisory Committee on VAT. The Committee could be enhanced and made more effective, thus keeping a significant role for Member States and improving the current unsatisfactory degree of uniformity.

3.8. The EESC considers it useful to duly trace heterogeneous applications and implementations of agreed VAT rules at national level. It is important to make differences transparent, clear and public in order to enhance uniformity under the current regulatory framework. Despite all the constraints and shortcomings described by the Commission, the Advisory Committee has nevertheless developed significant experience in dealing with complex matters regarding the VAT Directive.

3.9. The EESC suggests a ‘peer pressure’ approach. Such an approach could be effective, making it much harder for Member States to deviate and create obstacles to a well-functioning single market. Member States would have to explain why a deviation in implementation has been made. The EESC believes that Member States should not oppose transparency and accountability.

3.10. The EESC furthermore considers it important that the Commission carry out impact assessments of any differences in the implementation or interpretation of agreed VAT rules in any Member State. The impact assessments should be made public and discussed and followed up in the VAT committee.
3.11. Following this line of reasoning, the motivation to deviate from common rules and the agreed implementation of them could be challenged, while the proportionality and subsidiarity principle would be respected.

3.12. The EESC would finally like to draw attention to some possible unwanted effects of the new proposal. The implementing role for the Commission, with regard to some of the more relevant concepts contained in the VAT Directive, could make it difficult to distinguish between the scope of the Commission's new powers, on one hand, and what will actually constitute a modification of the VAT Directive, on the other. Such uncertainty might possibly make it more difficult to reach the unanimous agreement needed to modify the VAT Directive within the Council in the future.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on 'Proposal for a Council Regulation amending Council Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic registers'

(COM(2021) 28 final — 2021/0015 (CNS))

(2021/C 286/19)

Rapporteur: Szilárd PODRUZSIK

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Plenary session No | 560
Outcome of vote | 230/0/6

1. Conclusions and recommendations

1.1. As previously pointed out (1), the EESC fully supports the constant updating of the rules allowing an adequate degree of administrative cooperation between national tax authorities. Moreover, the EESC endorses the Commission and Member States in making the best possible use of IT and technologically enhanced systems to improve tax collection and tackle fraud.

1.2. The Commission proposal is fully supported by the EESC, insofar as it involves technical adaptations to the current legislation on national registers regarding excise duties, which have been made necessary by the recent approval of Directive (EU) 2020/262 (2).

1.3. The EESC recalls the importance of organising and running the national registers on excise duties, respecting the right to privacy with regard to the information inserted and processed within such registers. The processing of such data should not go beyond what is necessary and proportionate for the purpose of protecting the legitimate fiscal interest of Member States, in line with the proportionality principle as developed by the ECJ case-law.

1.4. Since it has become necessary to adapt national registers after the approval of Directive (EU) 2020/262, which provides for the definitions of ‘certified consignor’ and ‘certified consignee’, as well as the additional definitions of ‘certified consignor or certified consignee sending or receiving excise goods only occasionally’, the EESC recommends that the Commission ensure a sufficient degree of harmonisation in the interpretation and implementation of such concepts in order to guarantee the homogeneity of the information inserted within national registers.

1.5. The EESC encourages Member States to carefully consider and monitor implementation costs during the adaptation process triggered by the Commission proposal. However, should the adaptation process highlight the need for additional spending in order to fully protect the privacy of European businesses and people, adequate extra investments in IT and cybersecurity of the registers should be promptly carried out.

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(2) OJ L 58, 27.2.2020, p. 4.
2. Commission Proposal

2.1. The Commission proposal amends Council Regulation (EU) No 389/2012 (3), which lays down the legal basis for administrative cooperation between Member States in the field of excise duties with regard to the content of national electronic registers.

2.2. The proposal has been required by section V of the recently approved Directive (EU) 2020/262. In particular, Article 35(8) of the Directive states that ‘for a certified consignor or certified consignee sending or receiving excise goods only occasionally, the certification referred to in points (12) and (13) of Article 3 shall be limited to a specified quantity of excise goods, a single consignee or consignor and a specified period of time’.

2.3. Considering such a provision, the Commission proposal singles out the information to be inserted in the registers maintained by the Member States concerning the certified consignors and consignees which move goods only occasionally.

2.4. Article 19 of Council Regulation (EU) No 389/2012 sets forth a general obligation for Member States to maintain electronic registers of authorisations for economic operators and warehouses that are engaged in moving excise goods under duty suspension arrangements, as well as authorisations of economic operators moving goods that have already been released for consumption being the certified consignors and the certified consignees.

2.5. In order to achieve proper functioning of the computerised system by ensuring storage of complete, up-to-date and accurate data, the aim of the Commission proposal is to extend the scope of Article 19 of Council Regulation (EU) No 389/2012, setting out the information to be introduced within the national registers of economic operators moving excise goods only occasionally.

2.6. More specifically, this information concerns, for both the certified consignors and consignees, the quantity of goods, the identity of the economic operator at the end of the movement of the goods and the duration of the temporary certification.

2.7. The proposed amendment does not intend to define a new excise licensee circle, but rather links shipments in free movement in a Member State primarily to the already defined notions of ‘tax warehouse’, ‘registered consignee’ and ‘registered consignor’, associating them with the new ‘certified consignor’ and/or ‘certified consignee’ statuses. Thus, the amendment extends and refines the information already registered within the official database.

2.8. The proposal is based on Article 113 TFEU, according to which ‘the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition’.

2.9. The proposal does not impact the EU budget and shall apply from 13 February 2023.

3. General and specific comments

3.1. As pointed out in previous opinions (4), the EESC fully supports the constant updating of the rules allowing an adequate degree of administrative cooperation between national authorities aimed at ensuring the full collection of tax and an effective fight against fraud with regard to excise duties.

3.2. Moreover, the EESC supports the European Commission and the Member States in making the best possible use of IT and technologically enhanced systems to improve tax collection and to tackle fraud.

3.3. The proposal under assessment is therefore fully supported by the EESC, insofar as it involves technical adaptations to the current legislation on national registers regarding excise duties, which have been made necessary by the recent approval and implementation of Directive (EU) 2020/262.

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3.4. The EESC considers it advantageous to have a comprehensive database, which makes the information covered by the proposal verifiable in the SEED system. The monitoring of taxed shipments and the proper fulfilment of any tax burden in terms of excise duties will thereby become unified, more efficient and more transparent.

3.5. The proposal seems to comply with the subsidiarity principle, given that the content and functioning of national registers concerning the information on registered consignors and consignees operating on an occasional basis should be harmonised by means of European rules. Such rules can better accomplish the regulatory objective pursued by the Commission, if compared with several national approaches. In this respect, the choice of a regulation to be approved under Article 113 TFEU seems to be appropriate.

3.6. The proposal is also in line with the proportionality principles as developed by the case-law of the ECJ and enshrined within the Treaty. The content of the proposal, indeed, does not exceed what is necessary to achieve the regulatory objective pursued by the Commission, without unduly impacting the interest of private businesses.

3.7. In other words, the proposal leads to an acceptable increase in administrative burdens for national tax authorities, which is justified by the final result of making the control system carried out via the registers more comprehensive, as well as more efficient and transparent.

3.8. The EESC recalls the importance of organising and running the national registers, respecting the fundamental rights and particularly the right to privacy with regard to the information inserted and processed within such registers. The processing of such data should not go beyond what is necessary and proportionate for the purpose of protecting the legitimate fiscal interest of the Member States, in line with the proportionality principle.

3.9. Since the adaptation of the registers has become necessary after the approval of Directive (EU) 2020/262, which provides for the definitions of ‘certified consignor’ and ‘certified consignee’ (Article 3) and for the additional definitions of ‘certified consignor or certified consignee sending or receiving excise goods only occasionally’ (Article 35), the EESC recommends that the Commission ensure a sufficient degree of harmonisation in the interpretation and implementation of such concepts in order to guarantee the homogeneity of the information inserted within the registers operating at the national level.

3.10. The EESC notes that the proposal will not impact the EU budget but, at the same time, encourages Member States to carefully consider and monitor implementation costs during the adaptation process. Having said that, if deemed necessary, adequate additional investments in IT should be carried out should the adaptation process highlight the need for additional spending in order to fully protect the privacy of European businesses and people.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Building a European Health Union: Reinforcing the EU’s resilience for cross-border health threats’

(COM(2020) 724 final)

on ‘Proposal for a Regulation of the European Parliament and of the Council on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices’

(COM(2020) 725 final — 2020/321(COD))


(COM(2020) 726 final — 2020/320 (COD))

and on ‘Proposal for a Regulation of the European Parliament and of the Council on serious cross-border threats to health and repealing Decision No 1082/2013/EU’

(COM(2020) 727 final — 2020/322 (COD))

(2021/C 286/20)

Rapporteur: Ioannis VARDAKASTANIS (EL-III)

1. Conclusions and recommendations

1.1. Through this package for an ‘EU Health Union’, the European Union (EU) and the Member States (MS) must respond to the desire of people living in the EU to play a more active role in protecting their health and promoting the right to health. According to a recent EU survey, 66% of EU citizens would like to see the EU given more say over health-related matters. 54% of people surveyed say that public health should be a spending priority for the EU budget (1). There needs to be particular improvement in the EU’s capacity to effectively prevent, detect, prepare for and manage cross-border health threats. As such, a discussion and potential review of subsidiarity, the sharing of competences and the references to cross-border health threats and preparedness in the EU Treaties needs to take place once there has been time to fully evaluate this pandemic and the EU and national response. In the meantime, ambitious actions within the current framework of the Treaties should continue.

(1) Public opinion in the EU in time of coronavirus crisis 3 (europa.eu).
1.2. It has been observed and felt by the people living in Europe during the pandemic just how ill-prepared the EU was
to keep people safe, with its fragmented healthcare architecture and prevention strategy, as well as decades of austerity and
under-investment in health and social care services. This had an impact on loss of life, increasing inequality and poverty
rates. It also revealed that many people are still not protected against discrimination in the EU or do not have access to
public health information or healthcare. The EESC permanently calls for an upwards convergence of health and social
systems and general common EU principles (2). Health protection measures always have to respect all fundamental rights
and should be based on solidarity-based health systems. The EU Semester procedure should check the performance and
conditions of MS crisis management and health systems.

1.3. The COVID-19 pandemic has demonstrated how vital health and care services are and that health is a public good.
To that end, the EU and Member States should ensure that everyone has equal access to quality, well-staffed, well-equipped
health and social services.

1.4. During the pandemic, health workers, social workers, health mediators, civil society actors and essential service
providers (food, transport) have been at the forefront of the pandemic and demonstrated an outstanding degree of solidarity
during the most difficult times. Special attention should be given to healthcare workers and the need to improve working
conditions, including pay, recruitment and retention, as well as their health and safety. The pressure of the pandemic has
caused many to consider leaving the profession. This package needs to take note of this and of the role all the actors
mentioned above can play in the area of health. Likewise, local authorities, service providers and the healthcare workforce
should be consulted more thoroughly. Better coordination between EU, MS, regional and local levels including civil society
will increase efficiency to benefit people in the EU.

1.5. While the European Economic and Social Committee (EESC) commends the EU for the solidarity shown in the
vaccination strategy, we are seeing severe delays in the vaccine reaching people. The EESC asks the European Commission
(EC) to ensure that access to the vaccination remains, as was originally stated by the EC, a public good, free for all people.
The availability of future vaccines should not be impaired by intellectual property rights and EU legislation on data and
market exclusivity. Furthermore, there should be legal obligations for beneficiaries of EU-funds to share COVID-19 health
technology-related knowledge.

1.6. The pandemic has revealed the toxic relationship between communicable and non-communicable diseases. The vast
majority of COVID-19 deaths were linked to underlying and pre-existing health conditions. Another observed effect of the
pandemic was the impact on patients with chronic diseases whose access to treatment was negatively affected by the
pandemic. Therefore, the crisis response mechanism and the European Health Union should also include a focus on
non-communicable diseases. It should also contain a strong focus on the mental health crisis which was already present
before the pandemic but is arguably exploding due to the strain under which many people now find themselves.

1.7. Regarding the EU regulation on serious cross-border threats to health, the EESC stresses the need: to stockpile and
develop medicines that are usable and affordable for the entire population; for preparedness in protecting high-risk groups
to begin immediately, particularly with regard to those in closed settings and institutions; for data collection to be better
disaggregated to provide a clear understanding of the people most at risk; and for medical innovations and responses to be
accessible to all, regardless of their income, MS or region of residence.

1.8. In light of the renewed mandate of the European Centre for Disease Prevention and Control, the EESC underlines
the importance of making the reduction of health inequalities in the EU central to the Centre’s work, as well as of including
non-communicable diseases; being fully equipped to collect fully disaggregated and anonymised data, and generate
recommendations on the social and commercial determinants of health (3); and of having a mandate to monitor
investments and generate recommendations on the financing of health surveillance, risk assessment, preparedness and
response, both for the EU and the national level.

(3) Policy & practice: Commercial determinants of health and sport
1.9. When it comes to the reinforced role for the European Medicines Agency (EMA), the EESC urges that: the Medicines and Medical Devices Steering Groups include and meaningfully consult civil society and social partners; the supply of medicines and medical devices across the EU be not only consistent and sufficient, but that the EMA also work with all health stakeholders to establish a European model for pricing medicines in a fair, accountable and transparent way.

1.10. The new EU health package should be combined with the roll-out of the European Pillar of Social Rights (EPSR), particularly its principles 12, 16, 17 and 18 and the Action Plan on the EPSR which proposes, among other things, an EU Health Data Space. It should also be part of achieving Sustainable Development Goal (SDG) 3.

1.11. The overlap between the objectives of the different regulations needs to be addressed and the mandates of the different agencies clarified, to increase efficiency and avoid confusion about who is responsible for different actions. Furthermore, the formal comments recently issued by the European Data Protection Supervisor (EDPS) on the proposed European Health Union package should be followed up.

1.12. It is the opinion of the EESC that some elements of this package of regulations perhaps come too early, since we are still in the midst of the COVID-19 pandemic and are still learning about its impacts. At the same time, we appreciate that urgent action is required in certain areas of EU health coordination. We invite the EC to present a report by June 2021 on the lessons learned so far from the pandemic.

2. General comments

2.1. The EESC welcomes the EC’s proposed package for building a strong European Health Union. The proposed package includes: a) the communication on Building a European Health Union, strengthening the EU’s resilience to cross-border health threats; b) the adoption of a new regulation on serious cross-border threats for strengthening preparedness, reinforcing surveillance and improving data reporting; c) improved capacity of the European Centre for Disease Prevention and Control (ECDC) and the European Medicines Agency (EMA) to better protect people living in the EU and address cross-border health threats; d) the setting-up of an EU Health Emergency Response Authority (HERA) to efficiently support the EU level response to cross-border health threats; and e) the establishment of the new Health and Digital Executive Agency (HaDEA) which will be tasked with the roll-out and management of the annual work programmes of the EU4Health Programme.

2.2. The EESC calls on the EU and the MS to respond to the demand of European citizens to make health a priority. As pointed out by the EC in its communication, ‘European citizens increasingly express their desire for the EU to play a more active role in protecting their health, in particular against health threats that transcend national borders’.

2.3. The EC’s proposed package is the point of departure for the realisation of the right to quality health, and for strengthening inclusive health and healthcare systems for all people in the EU, neighbouring and EU accession countries. It also strengthens the platform for the EU’s contribution to global public health. Furthermore, social protection in health must be prioritised in the EC’s international partnerships.

2.4. While the ‘European Health Union’ package goes in the right direction, there is a need to expand beyond coordination alone. New measures should be combined with a possible revision of the EU Treaties, particularly the second subparagraph of Article 168(1) TFEU, to broaden EU competences in the field of health emergencies and cross-border threats to health and outline health protection as a public good. Article 35 of the Charter of Fundamental Rights of the European Union states that: ‘Everyone has the right of access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union’s policies and activities’. To that end it must be ensured that Member States invest adequately in public health and social care. The right balance between democratically approved national health and care systems and common needs for Europe should also be taken in account. All relevant scientific sources should contribute to accountable political decisions and a mandatory health impact assessment of all EU policy
initiatives should be implemented. Finally, health protection measures must respect all fundamental rights. Limitations of such rights should be proportionate, controlled by the courts and follow the principles of democracy and of the rule of law.

2.5. The EESC has already adopted opinions in the field of health (\(^4\)). In June 2020, the EESC’s plenary also adopted a Resolution on EESC proposals for post-COVID-19 crisis reconstruction and recovery (\(^5\)).

2.6. The move to improve the EU’s capacity to effectively prevent, prepare and manage cross-border health threats in a holistic way should be combined with the roll-out of the EPSR, particularly principles 12, 16, 17 and 18 and the Action Plan on the EPSR, which proposes among other things an EU Health Data Space. The space should be regulated as a public good. This initiative should also be part of achieving the SDGs and be linked to reforms funded by the Recovery and Resilience Facility (RRF), which could pave the way for advances in accessible e-health and telemedicine. The EESC looks forward to the RRF scoreboard, which will highlight what investments have been taken via the RRF in the health sector.

2.7. Despite European cooperation programmes between cross-border regions, with more than 20 years of investment from EU funds to promote health mobility in these areas, we have not yet achieved a more integrated model of cross-border care. A new impetus and long-term vision are needed to make cross-border territories the drivers of solidarity and cooperation in health. Where Member States share a land border, ‘Prevention, Preparedness and Response Planning’ should include familiarity with public health structures and staff in the adjoining State and should involve conducting joint cross-border exercises.

2.8. The pandemic has dramatically increased poverty rates and exacerbated pre-existing inequalities, especially in MS that have been badly hit by the economic crisis over the previous decade. The health crisis has strongly affected the economy, the labour market and social cohesion. Noticeable impacts on the labour market are the rise in unemployment, the freeze on hiring, a lack of new jobs being created and the reduction of working hours. Eurostat figures show a clear impact on unemployment rates in the EU because of the pandemic, with things likely to continue worsening in the years to come. The EU unemployment rate was 7.6% in October 2020, up from 6.6% in November 2019. For young people the situation is even worse, with unemployment having shot up from 14.9% to 17.7% between November 2019 and November 2020 (\(^6\)). It should be noted that Article 31(1) of the Charter of Fundamental Rights of the European Union states that ‘Every worker has the right to working conditions which respect his or her health, safety and dignity’. Article 3(3) TEU also expresses the aim of full employment.

2.9. Existing healthcare systems throughout the EU — not least those in MS that have been affected by austerity-driven policies, ongoing underinvestment and extreme cuts to public spending in the previous decade — were unable to respond effectively to the immense pressure that the COVID-19 pandemic caused. This pandemic has highlighted the deficiencies in health systems across Europe and the need to shift how we think about healthcare. Healthcare cannot be treated as a commodity. Equal access to treatment, increased staffing in the health sector and improved conditions for health workers must become a priority.

2.10. The EU’s coordinated vaccination strategy and joint vaccine procurement has proven to be insufficient. The EU is also still struggling with production capacity, which is resulting in an unnecessary loss of life. The EESC calls for a thorough review of the EU’s central purchasing system for COVID-19 vaccines. Once the pandemic is over, it would be useful to see how this central purchasing took place, what worked and what could have been done better. It is vital that we learn all possible lessons from this current situation and take such lessons forward into our future planning.

2.11. During the pandemic, civil society and social partners have played a crucial role in protecting and promoting rights. In all future actions directed at improving the health of the Europeans most affected by COVID-19 — older persons, especially those living in residential care, homeless persons, persons living in poverty, persons with disabilities, persons with chronic diseases, migrants, refugees, ethnic minorities and the LGBTIQ+ community — civil society organisations and social partners must be at the core of the design and execution of such actions.


2.12. The pandemic has revealed that many people are still not protected against discrimination in the EU or do not have access to public health information or essential healthcare. Furthermore, we have observed the growth of so-called medical deserts (7). According to the EU Treaties, people should also be free from discrimination. Currently, protection against discrimination at EU level in the field of healthcare does not cover all areas. The failure of the Council to adopt the Equal Treatment Directive published in 2008 means that protection against discrimination in healthcare is still not ensured on the grounds of age, disability, gender or sexual orientation, for example. This became clear during the pandemic. The gaps in services, access and protection against discrimination in the EU must be addressed.

2.13. The EESC is willing to be the central focal point for the participation of civil society organisations in the European Health Union processes, bringing together the representatives from EU institutions, MS and civil society organisations both at EU and national level.

2.14. The ‘European Health Union’ is an important new development. It must contribute to improving access to healthcare, and the safety and wellbeing of people living in the EU; it will reinforce an appreciation of the Union’s commitment to serving its people, and will also protect the MS against the threats of rising nationalism and populism. It should therefore be a topic to be included in the Conference on the Future of Europe. To that end, the EESC draws attention to the recommendations in the WHO — High Level Commission on Health Employment and Economic Growth report ‘Working for health and growth: investing in the health workforce’ and to the Five-Year Action Plan for Health Employment and Inclusive Economic Growth (2017–2021) which should be implemented as part of improving the EU’s preparedness for future health emergencies.

2.15. A genuine, inclusive European Health Union cannot be achieved with the proposed measures alone. It must go beyond pure crisis management and ultimately aim for a Europe where everyone enjoys the highest achievable health standard with equal access to high quality treatment. It should initiate systemic change to be better prepared not only for the next pandemic but also for other cross-border health challenges such as antimicrobial resistance, and the obesity and non-communicable disease epidemics affecting all European countries. It should also adopt the ‘one health’ approach, working on the link between human, animal and environmental wellbeing to preserve our health.

2.16. Given that in many MS it is the local or regional level that is responsible for prevention and delivering healthcare services, it is of paramount importance that the EU’s health package foresees multi-level governance that fully includes local and regional authorities, emergency organisations and service providers. It needs to be clear that, in the event of a major health incident, the local authorities will have a vital role to play in relaying information and data and in communicating the availability of hospital beds, nurses and life-saving devices and medicines in their locality. This information needs to be collected centrally at the EU level and, in the case of border regions, solidarity should be shown between the MS in supporting neighbouring regions and EU accession countries who have exceeded capacity in the provision of emergency healthcare. In some MS, health services are provided by social economy enterprises as non-profits, such as mutual health insurance companies. In all MS there should be adequate legal and financial frameworks for these services to ensure direct participation in EU measures, fair competition and upwards convergence in quality and accessibility, while ensuring that the principle of health as a public good is maintained. Besides, taking into account its opinion ‘Towards an appropriate European legal framework for social economy enterprises’, the EESC proposes introducing into EU law a legal framework suited to better recognition of Social Economy Enterprises (SEE). All relevant stakeholders within the MS should be addressed directly, digitally and quickly by the central data-collection team, to maximise the accuracy of the data collected and que quality of the EU’s coordinated response.

2.17. The EU should also look more closely at the recruitment, retention and working conditions of health and social care workers. Safety of health and social care workers should also be a priority, given the number of fatalities seen during the pandemic. Additionally, the EU should collect relevant and transparent data on the impact of COVID-19 on health and social care workers. This will allow the EU and Member States to assess the long-term consequences of COVID-19 more accurately and to develop measures to ensure that healthcare systems are better prepared for future health emergencies.

(7) https://www.aim-mutual.org/mediaroom/tackling-medical-deserts-across-the-eu/
2.18. There appears to be an overlap between the objectives of the different Regulations. It is unclear how the division of responsibilities will work in practice. There is a lack of clarity around which agency or body will lead on the overlapping actions, which could lead to confusion and inefficiency in the EU's coordination efforts. This needs to be clarified. Where repetition remains in the different Regulations, care must be taken to ensure a common set of definitions for all the terms used, such as what constitutes a 'public health crisis'.

2.19. COVID-19 drew attention to the fragmentation of the EU’s health architecture and the need to strengthen the role of all relevant European agencies. Despite EU funding, there is still insufficient investment in view of the scale of the challenges, including prevention. The EESC also regrets that the Recovery and Resilience Facility investment in health was reduced compared to the EC's proposal. This in our view is a major mistake.

2.20. The EESC urges caution when acting on proposals within the package. Whilst we generally support the package of regulations, the EESC expects an assessment to be made of the situation and the adequacy of the package of regulations once the pandemic is over and a more clear picture of the impact emerges.

3. EU Regulation on serious cross-border threats to health

3.1. The EESC welcomes this Regulation that will lead to the creation of a stronger and more comprehensive legal framework allowing the Union to better prepare for and react rapidly to cross-border health threats.

3.2. It is the view of the EESC that the current coordination mechanisms were vastly insufficient to contain the COVID-19 pandemic and protect people living in the EU, in as much as:

3.2.1. Current health security arrangements, based on the Early Warning and Response System (EWRS) and the exchange of information and cooperation within the Health Security Committee, could do little to trigger a timely common EU-level response, coordinate the crucial aspects of risk communication, or ensure solidarity among MS.

3.2.2. There was a fragmented approach to containing the virus which undermined Europe's ability to prevent its spread. In too many MS the measures introduced were not done according to scientific advice. We have seen this reflected in the infection rate of countries that were slow to adopt preventative measures, did not impose lock downs or opted for a 'herd immunity' approach. Specific geographical circumstances of MS, such as the borders they share with other countries with high infection rates or those experiencing a significant flow of migrants and refugees, were not taken sufficiently into consideration.

3.2.3. Persons in institutional care were particularly prone to infection and accounted for a disproportionate number of fatalities. For example, data available indicate that people in institutional settings were facing, and continue to face, the highest rates of infection and mortality from COVID-19. In Slovenia, for instance, 81 % of COVID-19 deaths were among care-home residents (8). The virus has had a devastating impact in these settings and future EU action on health security should fully address this gap.

3.2.4. When primary and emergency care units reached saturation, those most at risk of infection and severe health implications were the first to be denied treatment under systems of triage. Older people and persons with disabilities were particularly at risk of being denied emergency treatment.

3.2.5. The start of the pandemic saw severe shortages in personal protective equipment (PPE) and medical equipment. The pandemic exposed cracks in EU solidarity, with some MS preventing the export of PPE or ventilators to other MS that were in dire need of them. The lack of central EU Health Technology Assessment (HTA) for pharmaceuticals and medical devices also came to light as a considerable issue. These are issues the EU should never be faced with again.

3.2.6. There was a lack of disaggregated data on the groups most affected by COVID-19, which hampered attempts to identify and protect those most at risk.

3.2.7. Inconsistent communication with the public and stakeholders such as healthcare professionals across the EU, as well as between MS, had a negative impact on the effectiveness of the public health perspective response. There is also a lack of effective implementation of EU e-health tools and new artificial intelligence technologies.

3.3. It is the view of the EESC that the EU Regulation on serious cross-border threats to health could help alleviate such problems during future EU-wide health crises by:

3.3.1. Establishing a joint EU procurement procedure and providing for strategic stockpiling via the rescEU reserve to help mitigate similar shortages during future EU-wide health crises. It will be especially important to provide for medicines that are useable by the entire population and, in cases where certain groups will require adapted or alternative forms of treatment owing to their age, sex and gender, condition or disability, that this is taken fully into account.

3.3.2. Creating a comprehensive legislative framework to govern and effectively implement action at Union level on preparedness, surveillance, risk assessment, and early warning and responses. Preparedness for protecting high-risk groups should begin immediately, particularly with regard to those in grouped living conditions and institutions where it has been shown to be very difficult to sufficiently protect residents and respect their rights, as well as to ensure health and safety in terms of working conditions and an adequate level of personnel both in the health and care sectors. This Regulation should also foresee improved monitoring of the shortages of health and care workers in order to assist Member States, the European Commission and the national and European social partners to consider solutions to make work in the sector more attractive and so improve recruitment and retention.

3.3.3. Mobilising scientific expertise and interdisciplinary dialogue in a coordinated manner. It is the opinion of the EESC that this should be done hand in hand with the expertise of civil society, particularly organisations representing groups that are at high risk during pandemics such as older people, homeless people, people from ethnic minorities and persons with disabilities. It should also include the healthcare sector, researchers and other relevant actors, including social economy enterprises.

3.3.4. Enabling the EU’s Health Security Committee (HSC) to deliver guidance in the adoption of common measures at EU level to face a future cross-border health threat. The European social partners in the health sector (such as in the European Social Dialogue Committee for the Health Sector) should be consulted and included in the governance of the committee.

3.3.5. Facilitating the reporting of health system data and other relevant data for the management of cross-border threats. This data collection needs to be disaggregated to provide a clearer, Union-wide understanding of which groups are most at risk and most affected by health threats. The data should take into account gender, age, ethnicity, migration background, disability and chronic diseases. It should also cover data on the supply of health and social care professionals, stock of medicines, medical devices and personal protection equipment, intensive care and acute care bed capacity and beds in use, ventilators and ventilators in use, testing capacity and tests performed, and data on the resourcing of public health departments to ensure adequate, needs-oriented staffing levels, in particular per capita staffing levels for community medicine. It is also important to gather information on the inclusiveness of the national healthcare systems to ensure more equal access. This data should be used to adopt recommendations including on ratios for resources per population unit, including the number of healthcare and social services personnel, developed on the basis of good practice and policy assessments.

3.3.6. Establishing new EU networks of laboratories. Attention should be paid to how to ensure that medical innovations and responses are accessible to all, regardless of their MS or region of residence, and how to make them affordable to everyone.

3.3.7. Training programmes for specialists, which should also take into account the specific needs of different profiles of patients, health and care workers and the move towards e-health and telemedicine. We have seen during the COVID-19 pandemic that age and the existence of various conditions and disabilities has had an enormous impact on the risk of serious symptoms and fatalities. Regarding persons with disabilities and chronic diseases in particular, it is crucial that
specialists understand how to properly consult patients, respect the free will of all and ensure nobody is coerced into treatment. Training should be consistent with the one-health approach. Moreover, at border regions, joint cross-border exercises should be promoted and familiarity with public health systems encouraged.

4. European Centre for Disease Prevention and Control

4.1. The EESC welcomes the reinforcement of the mandate of the European Centre for Disease Prevention and Control (the Centre) addressing surveillance, preparedness, early warning and response under a strengthened EU health security framework.

4.2. This extension and expansion of the Centre's mandate comes at an opportune time and, if it is successful, will be a building block to enable the Union to better deal with the COVID-19 pandemic. It also has the potential to address the weaknesses the pandemic has highlighted in public health and health crisis response at EU and national level.

4.3. It is the view of the EESC that the Centre did not have the mandate, the mechanisms or the resources needed to respond to the COVID-19 pandemic in a consistent and effective way.

4.4. The principle of subsidiarity applies to national public health matters. However, in our Union, which involves significant movement of people and goods across borders, all communicable diseases are, potentially, cross-border health threats which deserve EU-level surveillance, preparedness, risk assessment, early warning and response.

4.5. The pandemic has revealed the toxic relationship between communicable and non-communicable diseases. The vast majority of COVID-19 deaths have been linked to underlying and pre-existing health conditions and chronic disease patients' access to treatment was negatively affected by the pandemic. Therefore, the crisis response mechanism and the European Health Union should also include non-communicable diseases.

4.6. The external evaluation of the Centre published in September 2019 highlighted important ways in which the Centre should be strengthened. It highlighted the need to strengthen relevance to MS, and to focus on addressing structural gaps and deficiencies in MS' public health systems that affect their ability to effectively contribute and optimally benefit from the ECDC's activities. The evaluation pointed to the need to review and expand the mandate of the Centre, and to amend the existing regulation.

4.7. The EESC notes that health protection is fundamental to the protection of human rights. Failure to adequately survey, prepare for, warn about and respond to health threats, as we continue to observe during the pandemic, undermines human rights, notably the right to health, and drives inequalities.

4.8. The proposal includes important improvements in the Centre's capacities:

— Improved ability to monitor the health situation will be strengthened based on digitalised surveillance systems.

— Better preparedness in the MS, through development of national prevention and response plans and stronger capacities for integrated rapid health responses.

— Reinforced measures to control epidemics and outbreaks through binding recommendations for risk management.

— Expanding the capacity to mobilise and deploy the EU health task force.

— Monitoring and assessment of health systems' capacity for diagnosis, prevention and treatment of specific communicable and non-communicable diseases.

— Reinforced capacity to identify the sections of the population most at risk and in need of targeted response measures.
— Strengthened links between research, preparedness and response, and policy liaising between public health and research communities.

— Building up competencies for health protection through the coordination of a new network of Union reference laboratories and a new network of national services supporting transfusion, transplantation and medically assisted reproduction.

— Expanding work on communicable diseases.

— Contributing to the EU’s commitment to global health security and preparedness.

4.9. The EESC has repeatedly called for the strengthening of public health investment in the EU. In doing so, through the reinforcement of the Centre’s mandate, it will be important to keep in mind the following:

4.9.1. The Centre should have the mandate and resources to address health inequalities and ensure EU health responses are targeted to those classed as being most at risk by multi-disciplinary scientific experts. Identification of those most at risk should be based on quality disaggregated data that includes these populations. This should meaningfully involve civil society, social partners, service providers and members of the most affected communities. Coordination between public health systems, the medical profession and civil society, including the social partners and SEEs working in the field of health, is key to sharing information.

4.9.2. Health is not a stand-alone issue. It is closely linked with a decent standard of living, decent work, adequate housing and nutrition and a full range of services and support. The EU has already committed to advance a Social Europe through the EPSR. The Centre must also be equipped to measure and to generate recommendations to the relevant EU structures such as those overseeing the European Semester process and the renewed Social Scoreboard of the EU Pillar of Social Rights. In coordination with these structures, it should be able to guide MS on the social determinants of health and on how to enhance health by addressing social determinants.

4.9.3. The Centre should be mandated to monitor investments and generate recommendations on the financing of health surveillance, risk assessment, preparedness and response, both for the EU and the national level.

4.9.4. Collaboration in systematic monitoring should take place between the ECDC and national centres for disease control. Together they should monitor who is most affected by health threats, detect cases and hotspot, spot trends and give recommendations.

5. EU Regulation on a reinforced role for the European Medicines Agency

5.1. The EESC welcomes the renewed role of the European Medicines Agency (EMA) and its increased capacity to mitigate shortages of medicines and medical devices across the EU.

5.2. It is the view of the EESC that the current role of the EMA was insufficient to deal with the challenges posed by the COVID-19 pandemic, particularly given that at the start of the pandemic in particular the EU saw severe shortages in life-saving medical equipment such as ventilators. Shortages were particularly noticeable in some MS and there was insufficient coordination in distributing devices and PPE fairly throughout the Union.

5.3. The renewed role and increased capacity of the EMA, to be activated in the event of another health crisis at EU level, will help alleviate the problems witnessed during the COVID-19 pandemic by:

5.3.1. Establishing a Medicines Steering Group and a Medical Devices Steering Group that would report back to the EC and MS on shortages or risks of future shortages. The Steering Groups, made up of experts from across the EU to offer a coordinated approach, should include professionals specialised in adapted medical treatment for those more at risk of health complications during pandemics such as the one we have just experienced. This will of course depend on the type of
health crisis the EU is going through, but will typically necessitate knowledge of adapted treatment according to sex and gender for older people, persons with disabilities and persons with serious health conditions. Civil society organisations should also be included and consulted in a meaningful way.

5.3.2 Reacting before there are shortages of medicines and spotting potential shortages. This needs to be the case not only for the most commonly-used medicines on the market in the EU, but also to ensure the continued availability of medicines and medical devices for rarer conditions, to ensure they are available in all MS and in all localities when needed.

5.3.3 Coordinating studies alongside the European Centre for Disease Prevention and Control (ECDC) to monitor the effectiveness and safety of vaccines, and facilitating a ‘rolling review’ in which a taskforce will look at data and evidence coming out of clinical trials in real time in order to speed up the process. This taskforce will also give scientific advice on draft clinical trials for medicines and vaccines. In exercising this competence, the taskforce should encourage the setting of the clinically most relevant performance targets for medicinal products to be measured in clinical trials. The agency already gives scientific advice, but this will now be done in a fast-tracked way within 20 days and free of charge.

5.4 There are several challenges for the EMA in its future activities. The agency needs to ensure that the supply of medicines and medical devices across the EU is not only consistent and sufficient, but that there is availability of stock that is affordable for citizens.

5.5 At this time the biggest challenge is rolling out the COVID-19 vaccinations. It is to be regretted that the EU’s strategy for vaccination overlooks certain high-risk groups as being eligible for fast-track vaccination, such as persons with disabilities and persons with chronic diseases. The order of treatment should be defined by multi-disciplinary scientific analysis that takes into account discrimination and the exposure of groups of people to the virus. The vaccine should be treated as a public good, and as such it is crucial to ensure that the timely administering of vaccines to the population is not overly hindered by restraints linked to things such as intellectual property rights. The saving of lives must always be the top priority for the EU. It is therefore vital that the EC ensure that Europe remains the leading continent when it comes to vaccine development.

5.6 During the COVID-19 pandemic the EMA has proactively shared data on approved vaccines and medicines and information on the conduct of the Agency’s activities. The EMA has also explained the regulatory processes to the public. This level of transparency is considered highly beneficial and should be also ensured in the future. For this purpose, the Regulation should include a provision that all clinical trial data on the basis of which the Agency authorises medicines or vaccines should be published, as should clinical trial protocols on which the Agency advises, in line with the Clinical Trial Regulation.

5.7 The EESC encourages the EMA to work with all health stakeholders to establish a European model for the fair, accountable and transparent pricing of medicines and for accessible pharmaceutical innovations.

6. Health emergency response authority

6.1 The EU is planning the creation of a European Health Emergency Response Authority (HERA). The legislative proposal to set up the agency is set to be released in the fourth quarter of 2021, but the outline of HERA has already appeared in the recently released Pharmaceutical Strategy for Europe.

6.2 The plan is for HERA to fill a major structural gap in the EU’s crisis preparedness and response infrastructure. It will strengthen coordination between MS by developing strategic investments for research, development, manufacturing, deployment, distribution and use of medical countermeasures. In order to achieve this, HERA will help the EU better respond to arising health needs by:

— Anticipating ‘specific threats and enabling technologies through horizon scanning and foresight’. This will require a considerable level of outreach to civil society groups representing people who are typically more at risk during health emergencies, in order to gauge the ways in which potential threats might have a disproportionate effect on them.
— Identifying and addressing investment gaps in key countermeasures including the development of innovative antimicrobials.

— Monitoring and pooling production capacity, raw material requirements and availability, thus addressing supply chain vulnerabilities.

— Supporting the development of cross-cutting technological solutions such as vaccine platform technologies, which sustain preparedness and response planning for future public health threats.

— Developing specific countermeasures, including through research, clinical trials and data infrastructure.

6.3. The EESC questions the overlap between objectives foreseen under the HERA and those under the ECDC, the EMA and the Regulation on serious cross-border threats to health. Issues of crisis preparedness, research, data and coordinated distribution of medicines and medical devices seem to be covered in the aforementioned Regulations. The added value of the HERA therefore seems unclear, and even perhaps risks blurring the lines between which body is responsible for which area of healthcare coordination. For example, it is unclear if the recommendations coming from the HERA would have precedence over those coming from the EMA in the case of the declaration of an epidemic affecting the EU.

6.4. The HERA should be a purely public organisation with a clear public health mission, not to be conflated with areas of industrial policy, and willing to exercise judgment that is independent of the pharmaceutical industry, and design solutions that are public health driven (for example, in the field of tackling antimicrobial resistance). It should have a sizable budget which will provide for independent long-term planning. A reasonable pricing clause should be envisaged in the legal texts governing how the HERA functions.

6.5. What can be seen, however, as HERA’s added value is the coordination role for the manufacturing of medical and protective equipment, as well as medication. The monitoring and pooling of production capacity, raw material requirements and availability is also an area in which the HERA will stand out compared to the work of the EMA and the ECDC. A successful HERA is a strong, independent and transparent public agency. The public interest should be at its core, translated into its priorities, governance and actions. Ensuring better disaggregated data in vulnerable groups would be a prerequisite for fighting health inequalities.

6.6. The EESC considers there are unaddressed issues that the HERA could logically be given the authority to oversee, and which have not yet been alluded to in any previous communications. The HERA is a great opportunity to build on the excellence of European science, to learn the lessons from the ongoing crisis and ensure that the public sector acts as a wise investor which steers meaningful, public health needs-driven innovation. In light of the overlaps with the work of other authorities, it could be advantageous to adapt HERA’s scope and responsibilities to include:

6.6.1. Coordinating an EU task force focusing specifically on the impact that health emergencies have on high-risk social groups, as well as on health and care workers. This working group could focus on, although not exclusively, older people, persons with health conditions and persons with disabilities.

6.6.2. Focusing on non-discrimination in the EU’s response to future pandemics, ensuring that preventative measures, emergency medical care and treatments are available to everyone, including homeless people, travelling communities and undocumented people residing in the EU, all of whom are at risk of falling through the cracks during a public response to health crises.

6.6.3. Communication campaigns during health emergencies to ensure people have a better level of understanding on how to protect themselves, what adaptations they need to make to their daily activities to remain safe and, if and when treatments are available, how to have access to them. This communication needs to be directly addressed and accessible to all people and take into account the particular needs of high-risk groups such as older people, persons with health conditions and persons with disabilities. During the ongoing COVID-19 pandemic, this communication has depended to a large extent on the work of civil society organisations. They should therefore be consulted in this activity.
6.6.4. The governance structure of the HERA should be transparent and balanced, including patient and public health organisations, civil society and the social partners, and representatives of the research community. Whilst the industries will be important partners, they should not be part of any governance structure of this new public organisation. The definition of global unmet needs will be done by the public health sector only and the goal will be to engage in the development of new products to bring them to the market.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
1. Conclusions and recommendations

1.1. The EESC welcomes the EU anti-racism action plan 2020-2025 put forward by the European Commission and hopes it will help both the EU and Member State institutions to renew their efforts in combating racism and other forms of structural discrimination.

1.2. The Plan is relevant and timely. The unfolding of the COVID-19 epidemiological crisis has created new challenges with regard to inclusion and promotion of diversity. Already marginalised groups such as migrants have experienced major medical, social and economic hardships. In times of crisis, discriminatory attitudes and actions tend to become more prevalent.

1.3. Even prior to the COVID-19 crisis, the situation of minorities and vulnerable groups in the EU was deteriorating. Anti-migrant attitudes became more widespread, pushed forward by electorally driven leaders and parties instigating anti-Muslim, anti-African and anti-Asian sentiments. Historical minorities such as the Roma increasingly became targets of racially motivated hatred. The Jewish population in Europe became less and less safe, bringing back painful memories of the vicious anti-semitism that plagued the continent before World War II.

1.4. Against this background, the Plan aims to streamline legislative, policy and budgetary actions. While the Plan brings together all available instruments, at times it seems to lack ambition and historical depth. Its approach is too prudent, while the situation on the ground is deteriorating fast. The EESC would like to emphasise that action to combat discrimination, racism, xenophobia and other types of intolerance at European level is a clear responsibility enshrined in the founding documents of the EU. It is not optional and the division of responsibilities between EU and national authorities should not become the basis for complacency and inaction. A specific concern is how to convince all EU Member States to participate in this effort and ensure the active cooperation of various bodies, institutions and organisations at national level.

1.5. The EESC supports the drafting of new legislation to strengthen the role of national equality bodies.

1.6. The EESC also encourages the Council to adopt the Commission's 2008 proposal for the implementation of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

1.7. The Framework Decision on combating racism and xenophobia by means of criminal law, a key legislative act, needs a comprehensive assessment of its implementation.
1.8. The online space is increasingly becoming a replacement for the traditional public sphere. It is also the space that some leaders, groups and organisations use to promote racist and discriminatory attitudes. When designing policies and procedures, a stronger emphasis should be placed on the organised spread of hate speech and on dealing with it accordingly.

1.9. Unfortunately, in the last decade we have seen a significant number of groups and organisations openly assuming ideas, symbols and actions originating in European interwar fascism. In the last decade they have moved from the fringes of public space to its centre, including via online mobilisation. They have also been encouraged by political developments outside Europe — governments of large states taking nationalist and conservative stances in internal and external policy. This new mobilisation should be dealt with accordingly, not only through legislative and punitive actions, which could come too late, but through direct and decisive actions addressing the root causes of right-wing radicalisation.

1.10. The EESC welcomes the Action plan on the European Pillar of Social Rights presented by the Commission and hopes it will strongly support equality in the labour market, including for people with a minority racial or ethnic background. We also hope that the social commitments of EU institutions and Member States will be upheld in the difficult economic times created by the COVID-19 epidemic.

1.11. The EESC looks forward to the Commission's comprehensive strategy on the rights of the child planned for 2021. We hope that the strategy will include actions tackling racism and discrimination, but also links with policies and resources which could mitigate the negative effects of the epidemic and the disruptions produced.

1.12. A comprehensive rethinking of the EU and Member State health policy is needed, with the aim of ensuring access to high-quality services for all people and especially for those coming from vulnerable and minority groups. This includes better financing of services, developing public health infrastructure in all regions, especially in poorer areas, developing primary health services and centring service provision around the needs and rights of patients. Special attention should be paid to the rights, dignity and welfare of elderly citizens who experience isolation in care homes during the COVID-19 pandemic.

1.13. The historical roots of racism should be subject to renewed interest and action, especially in the area of education. New curricula and new textbooks should be developed and training programmes for teachers and educators should be organised with EU support. An interdisciplinary approach to common European history and heritage should be promoted at the secondary and tertiary levels of education.

1.14. The EESC joins the Commission in encouraging all Member States to develop and adopt national action plans against racism and racial discrimination. Only around half the Member States have such plans, showing a variable level of interest and commitment on the part of the Member State governments. The EESC looks forward to the identification of common guiding principles for national action plans due in 2021 and is ready to contribute to the effort.

1.15. The EESC hopes that the efforts made by business organisations and individual companies to create and maintain an inclusive work environment for their employees, regardless of sex, racial or ethnic origin, religion, age, disability or sexual orientation will be further enhanced. An inclusive working environment also includes real social dialogue and robust employee representation. We look forward to European Diversity Charters Month in May 2021 and the launch of the online toolkit to help companies assess their internal diversity and diversity strategies.

1.16. The funding for actions to combat racism and discrimination seems generous. It includes the multiannual financial framework (MFF), the new citizens, equality, rights and values programme, Horizon Europe, and the new Recovery and Resilience Facility. Based on a general evaluation of actions so far, Member State governments seem to have a limited interest in accessing various resources and working to combat racism and discrimination. The EESC considers that budgetary provisions per se are not enough and a system of incentives should be put in place.
1.17. The EESC welcomes the Commission's intention to work with European political parties, the European Cooperation Network on Elections, civil society and academia to improve participation under the European democracy action plan. The EESC is ready to contribute to the work and bring its own perspective and expertise.

1.18. The EESC encourages the Commission to better integrate various plans which have significant overlapping of objectives and instruments. We suggest integrating the Anti-Racism Plan, the strategy to implement the Charter of Fundamental Rights, the Democracy Action Plan and the Rule of Law Report. Acknowledging the fact that these plans represent distinct policy fields, we should also identify common elements and synergies.

1.19. One of the pillars of effective policies in the fields of democracy, the rule of law and human rights protection is a vibrant, well-organised and assertive civil society that is active at all levels — local, regional, national and European. Thus, the EESC urges the Commission to develop a comprehensive European civil society strategy to help it fulfil its democratic mission.

2. General comments

2.1. Tackling racism and racial discrimination through legislation: review and action

2.1.1. The EESC encourages the Commission to undertake the comprehensive assessment of the existing legal framework as soon as possible. Monitoring the transposition and implementation of EU legislation is key to ensuring effective anti-discrimination action. The EESC encourages the Commission to include in the assessment the positions of frontline civil society organisations, social partners and community groups, as well as national equality bodies. The organisations working directly with the affected groups should be also involved.

2.1.2. The EESC looks forward to the monitoring report on the implementation of the Racial Equality Directive due in 2021 and welcomes a possible focus on law enforcement regulation. It also encourages the Commission to proactively use the infringement procedures when necessary.

2.1.3. The EESC supports the drafting of new legislation to strengthen the role of national equality bodies. It is regrettable that such important institutions, which are responsible for providing independent assistance to victims of discrimination, promote equality, conduct independent surveys, and issue independent reports and recommendations, have configurations of power and functions that are too diverse. It is absolutely essential to rethink and further strengthen their roles.

2.1.4. The EESC also encourages the Council to adopt the Commission's 2008 proposal for the implementation of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (1).

2.1.5. The Framework Decision on combating racism and xenophobia by means of criminal law (2), a key legislative act, needs a comprehensive assessment of its implementation. As stated in the proposal, there are serious concerns about the extent to which national criminal codes correctly criminalise hate speech and hate crimes, a concern also shared by the Committee.

2.1.6. Of particular concern is the proliferation of hate speech in the online space (3). Even though the Framework Decision requires Member States to criminalise public incitement to violence or hatred on the grounds of colour, religion, descent or national or racial or ethnic origin, there are significant shortcomings in putting the rule into practice. National authorities have to take into consideration the freedom of speech principle and define in more detail the content of illegal online behaviour. At the same time, they have to cooperate with the information technology platforms in order to regulate access and set clearer rules for moderating and removing content. There is progress in regard to the voluntary compliance of platform providers and the removal of illegal content but continuous effort is needed to keep pace with developments in the online space.

(3) The online space is also increasingly targeted by states pursuing unconventional strategies to influence public opinion.
2.1.7. The online space is increasingly becoming a replacement for the traditional public sphere. It is the space in which the majority of social interaction takes place, for a variety of needs and purposes, from buying goods and services, entertainment, information, education, cultural consumption, to civic and political mobilisation. It is a vast space, in which the development of technology and services pushes forward the boundaries of sociability and interactions. It is also the favourite space for political leaders, groups and organisations to promote their values and ideologies, to interact with the public and mobilise for action (4). Some of them place racist and discriminatory attitudes at the centre of their political action and mobilisation. When designing policies and procedures, a stronger emphasis should be placed on the organised spread of hate speech and on dealing with it accordingly.

2.1.8. Unfortunately, in the last decade we have seen a significant number of groups and organisations openly assuming ideas, symbols and actions originating in European interwar fascism. These include parties in national parliaments, extra-parliamentary parties, political movements and militias, all rooted in a political culture of hatred and discrimination. In the last decade they have moved from the fringes of public space to its centre, including via online mobilisation. They have also been encouraged by political developments outside Europe — governments of large states taking nationalist and conservative stances in internal and external policy. This new mobilisation should be dealt with accordingly, not only through legislative and punitive actions, which could come too late, but through direct and decisive actions addressing the root causes of right-wing radicalisation.

2.1.9. As stated in the proposal, some Member States have taken action to ban racist groups and their symbols, often under hate crime, hate speech or terrorism legislation, or have established criminal sanctions linked to the denial of crimes against humanity and/or the Nazi and fascist period as well as propaganda for terrorist groups. This is a step in the right direction but more action is needed. All countries should develop national responses to violent extremism. And their approach should be facilitated by joint action at EU level. The EESC looks forward to the Commission report on national responses to violent extremism. We encourage the Commission to work closely not only with law enforcement authorities, which are usually tasked with monitoring violent extremism, but also with national equality bodies, independent watchdog institutions, civil society organisations (including religious communities), social partners, the media and universities. The EESC is ready to contribute its own expertise to the development of EU joint plans to combat violent extremism. The actions should target not only visible and late-stage instances of violent extremism, but the root causes and the enabling environments which led to radicalisation and action.

2.1.10. The EESC encourages all Member States to consider ratifying without delay International Labour Organization Convention 190 (2019), the very first international treaty that straightforwardly condemns every form of violence and harassment in the world of work. As such, it has a bearing on racial, gender and all other kinds of harassment and discrimination.

2.2. Beyond EU legislation — doing more to tackle racism in everyday life

2.2.1. The EESC welcomes the new focus on countering discrimination by law enforcement authorities. Law enforcement authorities are working every day in all European communities and they could be key actors in the fight against racism, xenophobia and discrimination. Unfortunately, the education and training of personnel does not usually cover democracy, the protection of human rights and discrimination. In some cases, law enforcement personnel themselves develop racist, xenophobic and discriminatory attitudes, and in the worst case scenario they are linked with outside groups promoting these ideas. We welcome the work done by the European Union Agency for Fundamental Rights (FRA) and the Agency for Law Enforcement Training (CEPOL) to develop training resources and tools but this is not enough. The number of potential beneficiaries of education and training is in the order of hundreds of thousands. Therefore, cooperation with national training institutions has to be significantly stepped up, with more resources dedicated to training at EU and national level. FRA and CEPOL can also encourage national training institutes to cooperate with civil society organisations and universities in order to better adapt training content to national specificities.

(4) The EESC recommends that the European Commission better integrate this action plan with the European Digital Strategy.
2.2.2. The EESC welcomes the Commission’s strong commitment to combat discrimination, inequalities in access to employment, education, healthcare and housing through policy and funding programmes. Therefore, we welcome the Action plan on the European Pillar of Social Rights presented by the Commission and hope it will strongly support equality in the labour market, including for people with a minority racial or ethnic background. We also hope that the social commitments of EU institutions and Member States will be upheld in the difficult economic times caused by the COVID-19 epidemic.

2.2.3. The EESC welcomes the intention to use Next Generation EU, the Technical Support Instrument and the general budget for 2021-2027 to promote social inclusion, ensure equal opportunities for all and tackle discrimination. The COVID-19 crisis, with its disproportionate impact on vulnerable and minority people, has created the need for infrastructure development and equal access to the labour market, health and social care, housing, and high-quality, non-segregated and inclusive education and training services.

2.2.4. The COVID-19 crisis has exacerbated the problems of vulnerable and minority groups in relation to the job market. People with minority backgrounds experience difficulties getting jobs and, even when they have one, being paid according to their education and skill level. The economic effect of the pandemic, with large-scale layoffs and further deterioration of working conditions and pay, is hitting vulnerable and minority groups harder. We look forward to the action plan on the European Pillar of Social Rights in order to effectively address discrimination in the area of employment.

2.2.5. COVID-19 has also had a negative effect on education. The school closures which took place in 2020 — and will probably continue in 2021 as well — disrupted an educational process which was already insufficiently inclusive. Even before the pandemic, children and youth from vulnerable and minority groups left school early or did not participate fully in the education process. To the extent that they were participating in education, children with minority backgrounds were subject to discrimination and bullying, which the European Commission proposal does not fully acknowledge. Schools are not just educational institutions; within and around them several services are provided, from feeding to health monitoring and assistance and prevention of abuse by parents and community. Moving teaching online was an emergency solution. In many cases, this created another obstacle for vulnerable and minority children as they lacked suitable devices and an internet connection. As soon as the schools can be reopened, direct and strong action is required to start remedial teaching and service provision. The EESC looks forward to the Commission’s comprehensive strategy on the rights of the child planned for 2021. We hope that the strategy will include actions tackling racism and discrimination, but also links with policies and resources which could mitigate the negative effects of the epidemic and the disruptions produced.

2.2.6. The EESC welcomes the work of the Radicalisation Awareness Network and hopes that its activities will be further supported and developed, especially with regard to education.

2.2.7. In terms of health, COVID-19 has had a significant impact. The health inequalities suffered by people with a minority racial or ethnic background have worsened. We encourage the EU Health Policy Platform to fully address the issue of reducing inequalities based on racial or ethnic origin. The EU must do much more to ensure that EU citizens and residents have access to high-quality medical services during and after the pandemic. The EU’s efforts to provide medical equipment and, at a later stage, access to the vaccines, is to be praised and encouraged. But only a comprehensive rethinking of EU and Member State health policy can solve the problem of access and quality in the medium and long term for all people and especially for those in vulnerable and minority groups. This includes better financing of services, developing public health infrastructure in all regions, especially in poorer areas, developing primary health services and centring service provision around the needs and rights of patients.

2.2.8. More action is needed in relation to housing. As stated in the proposal, discrimination on the housing market reinforces segregation, with a knock-on effect in terms of education or employment opportunities and, in the case of families with children, has a significant detrimental impact on children’s development. The COVID-19 epidemic has highlighted the need for action to improve housing conditions. The prevention of infection and severe forms of the disease depends on general health conditions but also access to water and sanitation infrastructure. Segregated housing, especially in poorer areas, should be a priority. Even though funds for supporting non-segregated housing actions and ensuring access to inclusive and high-quality mainstream services are available through the cohesion policy, it is unclear whether national and local authorities are willing to access it.
2.3. Structural racism — tackling the underlying problem

2.3.1. Combating stereotypes and raising awareness of history is of the utmost importance for a continent free of racism and discrimination. The historical roots of racism should be subject to renewed interest and action, especially in the area of education. We welcome the Council of Europe’s work on history and teaching of history. However, the tools provided are not routinely used for the large-scale teaching of history. More concerted and decisive action is needed in this direction. New curricula and new textbooks should be developed and training programmes for teachers and educators should be organised with EU support. An interdisciplinary approach to common European history and heritage should be promoted at the secondary and tertiary levels of education. A focus on education, formal and non-formal, is the cornerstone of any effective policy against racism and discrimination.

2.3.2. The role of the creative sector is also very important, acting as a bridge between social groups. Empathy and solidarity are values that form the basis of an inclusive society. We therefore welcome the focus of Creative Europe and other programmes on projects that seek to remove barriers and encourage the social inclusion and participation of underrepresented and disadvantaged groups.

2.3.3. Working with journalists is also timely and relevant. We support the Commission’s endeavour to develop a series of seminars on racial and ethnic stereotypes bringing together journalists, civil society organisations and representatives of people with a minority racial or ethnic background. The EESC is ready to contribute to such efforts.

2.3.4. The EESC urges the EC and the Member States to work on a common methodology for gathering relevant data, including data disaggregated by ethnic and racial origin. The methodology should follow the principles set by the 2002 UN World Conference Against Racism, Racial Discrimination, Xenophobia and Relate Intolerance and the Durban Programme of Action — disaggregated data collection in population statistics should be collected with the explicit consent of the respondents, based on their self-identification and consistent with human rights standards protecting privacy. The EESC considers that the work done by the Fundamental Rights Agency in the field of data gathering is not enough and similar efforts should be organised at Member State level.

2.3.5. The EESC highlights the importance of good practice, in terms of engaging with the local level (towns) and neighbourhood/community level, where structural racism is interlaced with everyday life and work, with the aim of fostering a context of intercultural tolerance.

2.4. A framework for delivery: harnessing EU tools to their fullest extent

2.4.1. The EESC joins the Commission in encouraging all Member States to develop and adopt national action plans against racism and racial discrimination. Only around half of the Member States have such plans, showing a variable level of interest and commitment on the part of the Member State governments (5). The EESC looks forward to the identification of common guiding principles for national action plans due in 2021 and is ready to contribute to the effort. The policy areas highlighted in the current action plan (non-discrimination legislation and the role of equality bodies; hate speech and hate crime; unlawful profiling by law enforcement authorities; risks posed by new technologies; stereotypes and historical awareness; equal access to education, employment, healthcare, housing; mainstreaming of equality concerns at national level; involving the regional and local levels; funding to combat racism; data collection, dialogue with civil society) are well structured and comprehensive. A specific concern is how to convince all EU Member States to participate in the effort and ensure the active cooperation of various bodies, institutions and organisations at national level.

2.4.2. The EESC hopes that the efforts made by business organisations and individual companies to create and maintain an inclusive work environment for their employees, regardless of sex, racial or ethnic origin, religion, age, disability or sexual orientation will be further enhanced (6). An inclusive working environment also includes real social dialogue and robust employee representation. We look forward to European Diversity Charters Month in May 2021 and the launch of the online toolkit to help companies assess their internal diversity and diversity strategies.

(5) According to the 2020 FRA report (June 2020, FRA), 15 Member States had plans against racism, racial/ethnic discrimination and related intolerance in 2019: Belgium, Croatia, Czech Republic, Finland, France, Germany, Ireland, Italy, Lithuania, Netherlands, Portugal, Slovakia, Sweden, Spain. The United Kingdom had one but left the EU on 1 January 2021.

(6) According to the proposal, there are currently diversity charters in 24 Member States with over 12 000 signatories (companies, public institutions, non-governmental organisations, universities, trade unions) and in total over 16 million employees.
2.4.3. The EESC fully supports the Commission’s commitment to ensure that the fight against discrimination on specific grounds, and how these intersect with other grounds of discrimination, such as sex, disability, age, religion or sexual orientation, is integrated into all EU policies, legislation and funding programmes.

2.4.4. The funding for actions to combat racism and discrimination seems generous. It includes the multi-annual financial framework (MFF), the new citizens, equality, rights and values programme, Horizon Europe, and the new Recovery and Resilience Facility. Based on a general evaluation of actions so far, Member State governments seem to have a limited interest in accessing various resources and working to combat racism and discrimination. The EESC considers that budgetary provisions per se are not enough and a system of incentives should be put in place. A major reason for the limited interest could be the sensitive political nature of the actions and the political mobilisation of radical leaders, organisations and groups against these actions.

2.4.5. Combating racism and discrimination in external policies is also a priority, especially in a world severely affected by the COVID-19 epidemic. The EESC hopes that the values of anti-racism, non-discrimination and equality will be fully supported through the Neighbourhood, Development and International Cooperation Instrument, in cooperation with governments and civil society organisations and social partners from its partner countries (7).

2.5. Positive action by the EU: listening and acting

2.5.1. The democratic participation and representation of groups susceptible to marginalisation, such as people with a minority racial or ethnic background, is still insufficient in most parts of Europe. Therefore, the EESC welcomes the Commission’s intention to work with European political parties, the European Cooperation Network on Elections and civil society to improve participation under the European democracy action plan. The EESC is ready to contribute to the work and bring its own perspective and expertise. One priority would be to remove various legal and administrative challenges, accessibility barriers and institutional difficulties faced by people ready to engage in politics at all levels. Another would be working with parties and encouraging them to build more diverse and inclusive political constituencies, and promote leaders and candidates with a minority/vulnerable group background.

2.5.2. The EESC welcomes the Commission’s commitment to regularly meet with civil society organisations and social partners active in the fight against racism at European, national and local levels to take stock of progress in the fight against racism. The EESC is ready to participate in the dialogue. It is important to include faith actors in this process.

2.5.3. The EESC welcomes the Commission’s planned appointment of a coordinator for anti-racism. The coordinator will interact with Member States, the European Parliament, civil society organisations, social partners and academia to strengthen policy responses in the field of anti-racism.

2.5.4. The EESC looks forward to the Commission’s planned summit against racism. The summit will be organised to coincide with the International Day for the Elimination of Racial Discrimination on 21 March 2021 and this day will be marked each year by the Commission.

2.5.5. The Commission’s work to promote diversity and ensure a discrimination-free and inclusive workplace for all people, irrespective of their racial or ethnic origin or skin colour is welcomed and sets a very good standard for the operation of the other EU institutions.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

(7) OJ C 110, 22.3.2019, p. 163.
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Union of Equality: LGBTIQ Equality Strategy 2020-2025’

(COM(2020) 698 final)
(2021/C 286/22)

Rapporteur: Ionuţ SIBIAN
Co-rapporteur: Maria del Carmen BARRERA CHAMORRO

1. Conclusions and recommendations

1.1. The EESC welcomes and supports the courage of the European Commission in adopting the LGBTIQ Equality Strategy 2020-2025, which aims to reduce discrimination and ensure the safety and fundamental rights of LGBTI people throughout the European Union, through the adoption of legislative measures at European level, but also urging Member States to draw up and implement the action plans at national level that are mentioned in the strategy.

1.2. The EESC firmly believes that in order to be a successful strategy, the Commission must put in place a strong mechanism for implementing it and regularly monitoring its application, both horizontally and vertically. In this regard, the Commission must facilitate a broad dialogue between European and international institutions, Members States, civil society organisations, and social partners.

1.3. The EESC is convinced that in order to achieve its objectives, the LGBTIQ Equality Strategy must be correlated with other European strategies in order to have a cross-sectoral perspective, e.g. the Victims’ Rights Strategy, the Gender Equality Strategy, the EU Anti-racism Action Plan, the Strategy for the Rights of Persons with Disabilities, and the Strategy on the Rights of the Child.

1.4. One of the most pressing issues regarding discrimination against LGBTIQ people concerns discrimination in the workplace and in terms of access to the labour market. Thus, the Equal Treatment and Employment Directive (2000/78/EC) (1) must also protect transgender, non-binary, intersex and queer people against discrimination in these areas. In addition, the EESC welcomes the Commission’s desire to extend the applicability of the directive to areas other than employment, considering it an effective measure to combat discrimination against LGBTIQ people.

1.5. To improve the employability of LGBTIQ people, active employment policies and introducing an LGBTIQ perspective in employment plans are necessary. It is also essential that LGBTIQ Equality Plans exist in companies, in order to combat discrimination suffered by LGBTIQ people at work, and that they set out concrete measures, protocols and tools to fight discrimination.

1.6. In order for LGBTIQ people to not face socioeconomic deprivation and high rates of poverty and social exclusion, Members States must be encouraged to provide medical and social services, shelters, help programmes and safe places for LGBTIQ people who are victims of domestic violence, hate crimes and hate speech, and LGBTIQ youth who are left without family support, etc.

1.7. The EESC strongly believes that so-called conversion practices should be prohibited by all EU Members States, since they are practices that violate fundamental rights and have been classified as torture. The European Commission must support Member States to ban all forms of harmful practices, including medically unnecessary interventions on intersex people, and reform their legal gender laws to ensure that they meet the human rights standards of self-determination.

1.8. The EESC is asking the European Commission to provide funding for the training of professionals who interact with LGBTIQ people, as well as encourage the exchange of best practices between Members States. Furthermore, European funding is needed for the specialised training of doctors, teachers and other professionals in order to better understand the specific circumstances and needs of LGBTIQ people. Furthermore, the EUHealth4LGBTIQ pilot project is providing training manuals for healthcare providers and the European Commission should support Member States in ensuring that these training courses are available at national level.

1.9. Regarding the funding from the EU budget for the Member States, in our view, the European Commission must implement a strong mechanism for supervising the use of these funds by the Members States in accordance with the European principle of non-discrimination mentioned in Article 2 TEU, as well as in full respect of fundamental rights as set out in the Charter of Fundamental Rights. This oversight must be performed both ex-ante, by carrying out a diversity audit, and ex-post, as set out in the Common Provision Regulation for the 2021-2027 funding period.

1.10. The European Commission must assume the role of guardian of the European Union's treaties and step up its efforts to ensure full implementation and application of relevant EU legislation and the case-law of the Court of Justice of the European Union in the Members States, especially with regard to Directive 2004/38/EC, as well as asylum legislation. It is also important that, in the context of free movement and cross-border situations, a clear, inclusive and non-discriminatory regulation on the notion of 'family' is adopted at European level, including rainbow families, as well as on the recognition of birth certificates of transgender persons in all Members States, independently of other administrative or judicial proceedings.

1.11. The European Union must assume its role in helping to advance human rights globally, including the freedom and dignity of LGBTIQ people. To achieve this goal, the European community must work with international and regional institutions to universally decriminalise homosexuality and respect the dignity and the fundamental rights of LGBTIQ people worldwide.

2. General comments

2.1. The EESC considers that it is essential that both European and national institutions put in place public policies to protect LGBTIQ individuals, so that the values enshrined in the Charter of Fundamental Rights (CFD) as well as in the Treaty on European Union (TEU), namely ‘human dignity, (...), equality, (...), respect for human rights, including the rights of persons belonging to minorities’, are respected throughout the Union (1). The EESC supports the European Parliament resolution declaring the EU an ‘LGBTIQ-Freedom Zone’.

2.2. Data (2) from the European Union Agency for Fundamental Rights (FRA) shows that LGBTIQ individuals are a vulnerable group that needs support from both the European institutions and the national authorities in the Member States. We believe that the LGBTIQ 2020-2025 Equality Strategy is a first step in combating discrimination against sexual orientation, gender identity/expression and sex characteristics as well as ensuring a safe space for the LGBTIQ community throughout the European Union.

(2) Article 2 of the Treaty on European Union.
2.3. The EESC welcomes the Commission document’s use of intersectionality as a cross-cutting principle: sexual orientation, gender identity/expression and/or sex characteristics are taken into account alongside other personal characteristics or identities, such as sex, racial origin, ethnicity, religion, faith, disability and age. All this is also put in the context of the COVID-19 crisis, which has disproportionately affected vulnerable LGBTIQ individuals.

2.4. However, in order for the LGBTIQ 2020-2025 Equality Strategy to be implemented effectively and efficiently throughout the European Union, the European Commission must create an operationalisation and monitoring mechanism to oversee whether or to what extent the strategy has been implemented. In this respect, the Commission must check annually whether and to what extent the European institutions and Member States have implemented the key priorities mentioned in the strategy. This evaluation should be carried out in consultation with Member States and organised civil society.

3. Specific comments

3.1. Discrimination against LGBTIQ individuals

3.1.1. Discrimination affects LGBTIQ people at all stages of life. From an early age, children, young people and children of LGBTIQ or rainbow families, where one of the members is LGBTIQ, are often stigmatised, making them the target of discrimination and aggression that affects their educational performance, job prospects, their daily life, as well as the well-being of the whole family. Therefore, greater and better child protection measures are necessary, especially in the field of education, to eradicate the discrimination suffered by LGBTI people.

3.1.2. One of the most pressing issues regarding discrimination against LGBTIQ people concerns discrimination in the workplace and in terms of access to the labour market. Thus, the Equal Treatment and Employment Directive must also protect transgender, non-binary, intersex and queer people against discrimination in these areas. In addition, the EESC welcomes the Commission’s desire to extend the applicability of the directive to areas other than employment and vocational training, considering it an effective measure to combat discrimination against LGBTIQ people.

3.1.3. With regard to discrimination in the workplace, particular attention must be paid to transgender people because of the social challenges they face (for example: the mismatch between the factual and legal situation due to difficult procedures for changing identity documents in most Member States, lack of medical procedures, prejudices they face, etc.). These social challenges can lead to harassment in the workplace, dismissal, and, generally, numerous problems from job search onwards.

3.1.4. We highlight the need for the European Union to establish lines of action on active employment policies, with the aim that the Member States and national authorities develop national employment plans that include specific measures for LGBTIQ people and limit the effects of the lack of access to employment from which they suffer structurally.

3.1.5. The EESC considers it essential to expand European regulations on equal treatment in employment, with the aim of incorporating trans people, as well as non-binary, intersex and queer people, with the purpose of protecting all LGBTIQ people from discrimination in employment on the grounds of sexual orientation, gender identity and expression, and sexual characteristics.

3.1.6. The EESC supports the European Commission’s proposal to extend the Directive on equal treatment to other areas beyond work and vocational training. In this regard, we consider that the Commission must be supported in its request to the Council to adopt the proposal, in order to close the gaps in the protection provided by EU law against discrimination on grounds related to sexual orientation, but also gender identity/expression, sexual characteristics and family group.

3.1.7. The EESC supports the European Institutions’ appeal to Member States to ratify ILO Convention No 190 concerning the elimination of violence and harassment in the world of work, which refers to a range of unacceptable behaviours and practices directed at people because of their sex or gender and which gives guidance to governments and
social partners on how to identify tools to prevent and address these forms of discrimination. Collective bargaining at all levels and collective agreements can help set targeted measures for the workplace, and with the implementation of the autonomous agreement signed by the European social partners against violence at work.

3.1.8. Given the discrimination of LGBTIQ individuals in the very space where they should feel most secure, namely in the family environment, many people belonging to the LGBTIQ community, especially young people, end up becoming homeless. In many Member States there is an inability among the authorities to provide social and medical services in order to support these people. Therefore, it is essential that LGBTIQ individuals benefit from safe shelters and medical services so that they can integrate into society and can find a stable and secure job.

3.1.9. In addition to the Commission’s proposals to reform the common European asylum system, it is essential that the European Union provides funds for judges, prosecutors and border guards, professionals working in immigration services and interpreters, in order to receive training to understand the specific needs of vulnerable applicants for international protection, including LGBTIQ individuals.

3.1.10. In this regard, the EESC considers it essential to limit the application of migrant return policies at the borders of the EU, taking into account the fact that many of these people are fleeing from persecution in their countries of origin on grounds of sexual orientation, identity/expressed gender and sex characteristics. Being returned without giving them the opportunity of requesting international protection violates the most fundamental human rights, international treaties and, in some cases, national laws on international protection.

3.1.11. In our view, the Commission should consider recognising the right to gender self-determination for trans people, thus complying with the highest international standards of respect for human rights and promoting their recognition in the Member States and by the national authorities, so that trans people can see their identity recognised without the need for a third party to have to prove it.

3.1.12. The European Commission should monitor access to healthcare coverage for gender affirming treatment for transgender people and engage with Member States to make full use of the possibilities of the EU cross-border healthcare framework to address any national shortcomings.

3.1.13. The Commission should encourage the Member States to adopt strategies at national level for the surveillance, control and prevention of sexually transmitted diseases. It is also essential in this field to prioritise funds for health professionals, and to participate in training in accordance with the recommendations of the World Health Organization (WHO) and with the 11th edition of the International Statistical Classification of Diseases and Related Health Problems (ICD-11). In addition, it is essential that the Member States encourage the exchange of experience and practices among specialised healthcare professionals of different Member States.

3.1.14. Member States should be encouraged to ban ‘conversion therapy’ throughout the EU, a degrading practice with numerous repercussions on the physical and mental health of LGBTIQ individuals. In addition, Member States should be encouraged to adopt legislative measures prohibiting ‘intersex mutilation’. This would ensure that intersex people have the right to decide for themselves whether they wish to undergo medical procedures for the assignment of a particular sex or not, and derogation from this rule would only be allowed in the context of urgent medical needs where the life of the intersex person is in danger.

3.1.15. The European Union funding programmes should be closely linked to and conditional on the EU values promoted in Article 2 TEU. Also, for large projects, Member States should be required to carry out an impact assessment on vulnerable groups, including LGBTIQ individuals, for projects financed by EU funds. Thus, at Member State level there should be a diversity audit for EU funding, conducted by an independent commission made up of local or central national public authorities and civil society organisations (*).

(*) In order to implement this measure, a body of experts needs to be formed to assess the extent to which projects implemented by Members States help vulnerable groups, including the LGBTIQ community, as well as the analysis done both ex ante and ex post on the implementation of projects financed by the European funds, based on an evaluation grid established at European level.
3.1.16. For the training of experts called upon to conduct this diversity audit within the framework of EU funding programmes, a training programme developed at European level should be rolled out to develop skills and encourage the Member States to exchange good practices on the impact of EU funding programmes on vulnerable groups, including the LGBTIQ community. To implement this measure throughout the EU, a supervisory mechanism at European Commission level needs to be established.

3.1.17. The Member States should be encouraged to implement national education and awareness-raising campaigns and programmes to reduce and combat discrimination against people with a different sexual orientation and gender identity. In this respect, national authorities should ensure that mandatory national school curricula incorporate information on human rights, including sexual orientation, gender identity and expression, with a view to preventing discrimination, prejudices and stereotypes. Furthermore, primary and secondary schools should provide comprehensive sex education whereby children and adolescents acquire the knowledge and skills to lead healthier lives and engage in equal relationships.

3.2. Ensuring the safety of LGBTIQ individuals

3.2.1. We know that in several Member States there have been referendums to amend national constitutions, aimed at restricting the rights of LGBTIQ individuals or stigmatising this category of people among the general public. Given that information flows in a cross-border area throughout the European Union, Member States need to ensure the transparency of public funding for all players involved in such referendums.

3.2.2. The EESC supports the initiative to extend the list of 'EU crimes' under Article 83(1) of the TFEU to cover hate crime and hate speech, including when targeted at LGBTIQ people. It is therefore necessary for the Commission to adopt information and awareness-raising measures on this issue at European level. The Commission should launch a communication campaign with the aim of counteracting this trend and associated behaviours, promoting the equality of all its citizens. We propose that this campaign be launched at European level and that it address the problems experienced in each Member State at local level. These initiatives should be included in the framework of the EU Action Plan for Democracy. In addition, all European countries have committed to collecting data for the Organization for Security and Cooperation in Europe (OSCE) on hate crime, which can be utilised in this context.

3.2.3. The European Commission, in cooperation with the Member States, should also adopt a number of measures to combat fake news and misinformation, as well as hate speech, both online and offline. In this respect, the Commission must develop a mechanism to monitor the proper implementation of the Audiovisual Media Services Directive (DSMAV) at Member State level, but also adopt a European legislative framework to combat fake news and misinformation more easily.

3.2.4. In order to combat hate speech in the online environment we consider the Commission’s actions to promote and implement the 'Code of conduct on countering illegal hate speech online', signed by Facebook, Microsoft, Twitter and YouTube, extremely encouraging. This type of tool — a code of conduct to combat hate speech — should be implemented as a recommendation at Member State level, both in the online and audiovisual space, in order to create a safe space for LGBTIQ individuals, as well as for other vulnerable groups who can easily be subjected to online harassment or hate speech (7).

3.2.5. The LGBTIQ 2020-2025 Equality Strategy should be linked to the Victims’ Rights Strategy 2020-2025 so that people belonging to sexual minorities can have the confidence to report the hate crimes committed against them. Thus, it is necessary to ensure continuous professional training for police officers, lawyers and magistrates in the field of hate crimes, prejudices and stereotypes, and cooperation with NGOs that provide support to LGBTIQ individuals in this field is essential.

(7) Codes of conduct should be inspired by EU values on equality, human rights, diversity and also freedom of expression, creating a group of experts to monitor the implementation and application of this working tool, but also with the involvement of civil society organisations whose sphere of activity is defending human rights and vulnerable groups.
3.2.6. The COVID-19 pandemic has shown us that most Member States are insufficiently equipped to provide emergency or short-term shelter to LGBTIQ individuals who are either victims of domestic violence, especially transgender people, or are being assaulted by their own families. Thus, the construction of shelters, safe houses and assistance centres and the provision of integrated assistance services requires the cooperation of national authorities and non-governmental organisations, and EU funding.

3.3. Building inclusive societies for LGBTIQ individuals

3.3.1. The European Commission must assume the role of guardian of European Union law, as derived from European regulatory acts and the case-law of the Court of Justice of the European Union (CJEU) for the correct and uniform application of European law in all Member States. It must step up efforts and develop extensive mechanisms to monitor the applicability of European law and decisions of the CJEU within the framework of national law and in the practices of national authorities.

3.3.2. As regards the right to free movement, one of the pillars of European law, the European Commission must develop a monitoring mechanism to ensure that the rights conferred by Directive 2004/38/EC, in particular the right to move and live freely, are recognised for all European citizens and their families, including rainbow families throughout the Union.

3.3.3. In order for all LGBTIQ persons to enjoy the right to free movement throughout the European Union, we call on the European Commission, on one hand, to develop a regulatory framework through which the notion of ‘family’ is an autonomous one, independent of the national law of the Member States, especially in cross-border situations, and, on the other hand, to make sure that birth documents exchanged following an administrative or judicial procedure are recognised in all Member States, in the context of free movement. The European Commission should engage with Members States on facilitating registration of kinship for transgender parents according to their legally recognised gender identity, with a view to protecting these families against unwanted outing, discrimination and violence.

3.4. Leading the call for LGBTIQ equality across the world

3.4.1. European institutions must assume the role of guarantor and protector of fundamental human rights in both their internal and external actions. In order for this to be fulfilled, it is necessary to work with other regional and international institutions, such as the Council of Europe and the United Nations, to secure for LGBTIQ individuals and human rights defenders the safety and equality they deserve. It is also important that, in addition to supporting measures to combat violence, hate and discrimination against LGBTIQ individuals through the Instrument for Pre-accession Assistance (IPA) in candidate or potential candidate countries, European institutions introduce these criteria in their external actions, in the field of funding to non-EU countries.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Action plan on Integration and Inclusion 2021-2027’

(COM(2020) 758 final)

(2021/C 286/23)

Rapporteur: Paul SOETE

1. Conclusions and recommendations

1.1. The EESC is pleased to note that the Commission’s Action Plan on Integration and Inclusion (hereinafter the ‘Action Plan’) is part of a comprehensive response to the challenges linked to migration, as put forward in the new Pact on Migration and Asylum.

1.2. The Action Plan is broader in scope than the previous one: unlike its 2016 predecessor, the new Action Plan covers not only migrants, but also EU citizens ‘with a migrant background’. Although integration is important for this category of citizens too, and for all citizens and residents, this may also result in less targeted actions, as the problems faced by newcomers are different from those of second- and third-generation migrants.

1.3. The integration and inclusion tools are mainly in the hands of national, regional, and local authorities. Action at EU level is complementary and designed to promote, facilitate, and coordinate collaboration. As a consequence, in the Action Plan there are no global or specific objectives for Member States, but only recommendations. Given the current situation and the impact of the pandemic, there is a risk that these integration issues will be considered as having lower priority.

1.4. The Action Plan addresses all policy areas that are essential for the socioeconomic and political integration of newly-arrived migrants, and gives an overview of the list of European initiatives in different fields that can have an impact on migration and integration. The EESC points out that the real challenges lie in implementing these policies.

1.5. The EESC supports the objectives proposed by the Action Plan in key sectoral areas. However, it also wishes to point out that these are examples of possible actions rather than measurable targets. For this reason, their effective implementation seems to be conditional on a monitoring process that is yet to be put in place. The EESC encourages the Commission to put in place continuous monitoring of the Action Plan’s implementation.

1.6. Compared with the 2016 Action Plan, more attention is paid here to the gender dimension of integration in general. Gender aspects should also be highlighted in the different sections on the sectoral areas.

1.7. The EESC emphasises that the value of work in general should be a thread running through the Action Plan, as work in all its different forms is a key aspect of integration and personal development.
1.8. The Action Plan gives an overview of all the funding instruments available in each sectoral area. However, these instruments seem to be designed for subsidy experts, and the EESC suggests that the Commission make access to funding easier, for instance by creating a dedicated integration instrument. The EESC also fears that funding for integration will gradually slip down the priority list.

1.9. The EESC emphasises the importance of civil society in general for integration into the local way of life, as well as the specific role of unions and employers’ organisations.

2. Background

2.1. The Action Plan on Integration and Inclusion 2021-2027 is part of a comprehensive response to the challenges linked to migration put forward in the new Pact on Migration and Asylum. It builds upon and updates the commitments of the 2016 EU Action Plan on Integration and it lasts seven years with a mid-term review in 2024, in line with the MFF for the same period.

2.2. The need for an Action Plan arises from the striking differences between migrants and natives in levels of education, employment, poverty, and housing conditions. To mention one figure illustrating this gap, the percentage of young migrants (aged 18-24) who are neither in employment nor in education and training (NEETs) in the EU is 21% compared to 12.5% for natives. There is also an important gender gap, with the percentage of young migrant girls falling into this category standing at 25.9% (1).

2.3. The COVID-19 pandemic has shed light on deep-seated inequalities in access to health care for migrants, with risks for society at large. It has also revealed that migrants are more likely to work in jobs requiring close interpersonal contact and are therefore more exposed to COVID-19.

2.4. Fully integrating migrants into the labour market could generate large economic gains in national welfare, including for pension schemes and in terms of fiscal contributions (2). This is a win-win outcome as fully fledged integration also benefits migrants by giving them access to the host country’s welfare system.

2.5. The Action Plan refers to a set of general key principles and values common to all EU inclusion policies, including a reference to the European Pillar of Social Rights.

2.6. The specific actions presented in the Action Plan concern four sectoral areas, namely Education and Training, Employment and Skills, Health, and Housing. For each one of these integration gaps are identified. These actions are complemented by cross-cutting actions, including building strong partnerships, increasing the various opportunities for funding, fostering links with the host society, enhancing the use of new technologies and digital tools, and monitoring progress in integration.

2.7. The EESC acknowledges that the focus of the Action Plan is on the integration process as such and not on entry to the EU. Despite this, it wishes to emphasise that the issue of family reunification remains an important factor of legal and social integration.

3. General comments

3.1. Unlike the 2016 Plan, the current one covers not only migrants, but also EU citizens ‘with a migrant background’. The EESC takes note of the broader scope, as integration aspects are also important for this second category of citizens and for all citizens and residents; this promotes the European way of life, where rights and inclusion needs are also linked to responsibilities.

(1) EC, Action Plan on Integration and Inclusion 2021-2027, p. 5.
(2) Ibid., p. 2.
3.2. Despite this, the EESC fears that the broader scope of the Action Plan may also result in less targeted — and, therefore, less effective — actions. The problems faced by newcomers are different from those of second- and third-generation migrants. In addition, including the social needs of second- and third-generation migrants in migration and integration policies risks stigmatising them and perpetuating racism.

3.3. The Action Plan of the Commission gives a good overview of the list of European initiatives in different fields that have an impact on migration and integration. The document addresses all essential policy areas that are required for socioeconomic and political integration of newly-arrived migrants. It also discusses the availability of funds and partnerships with institutions and organisations to facilitate integration.

3.4. The EESC underlines that, alongside these policies, work remains a key driver of integration and as such should be safeguarded and promoted as a central element throughout the Plan.

3.5. The EESC underlines that the real challenges lie in implementing these policies. For example, even when migrants’ previous qualifications are recognised, employers hesitate to hire them because of lack of trust concerning their skills level. This seems to be the case for migrants from the MENA region, and South and Central Asia.

3.6. The commitment to strengthening the involvement in EU integration and inclusion policies of regional and local authorities, civil society, and migrants and their organisations is a positive aspect of the new Action Plan. The EESC notes that civil society should also include unions and employers’ organisations.

3.7. The Action Plan rightly acknowledges the importance of national, regional, and local authorities in integration policies and promotes cooperation between them. In fact, it should be noted that most integration tools are in their hands. Action at EU level is complementary and designed to promote, facilitate, and coordinate collaboration, when useful. As a consequence, the Action Plan contains no overall objectives or specific ones for Member States, but only recommendations.

3.8. Since the text is non-binding and Member States are ultimately responsible for integration policies at the national level, the EESC stresses the need for clear commitments by EU Member States and the establishment of appropriate forums, including regular meetings, to coordinate policies and evaluate progress.

3.9. The Commission clearly sets out what it wants to achieve in each area. The EESC supports the diagnosis and proposed achievements, but notes the absence of any clear general or action-specific targets. The effectiveness of implementation seems to be conditional on a monitoring process that should be put in place.

3.10. In the opinion SOC/649 (A New Pact on Migration and Asylum) (1), the EESC wondered about the scale and support of integration measures. The tools and incentives offered to the different stakeholders by the Action Plan may not be sufficient to improve integration in a sensible way, especially given the long-term nature of measures in this field. It is therefore necessary to monitor the implementation of this point.

3.11. Funding is an important part of the Action Plan. Member States and other stakeholders are encouraged to make full use of EU funding. The Action Plan also gives an overview of all funding instruments available for each sectoral area.

3.12. While mainstreaming is mentioned among the guiding principles informing the Action Plan, the Plan does not provide satisfactory guidance on how to mainstream integration policies into general social cohesion measures.

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3.13. The EESC welcomes the reference to the gender dimension of integration in the new Action Plan. At the same time, it highlights that the gender-related challenges of integration deserve more attention and more specific action in each of the sectoral areas.

4. Specific comments

4.1. Education and training

4.1.1. The Action Plan states correctly that education and training are the foundation of successful participation in society. Schools and other education facilities provide an important environment for building an inclusive society and fighting segregation. In addition, acquiring civic education about democracy and citizenship lay the groundwork for active participation in society while also preventing young people from being attracted to extremist ideologies. This is an area where an active participation in civil society should be encouraged since it promotes trust, social cohesion and belonging.

4.1.2. Regarding the specific actions to improve participation in education and training, the support provided by the Commission should be further specified, as the Action Plan contains only general references to targeted support activities. The most specific action mentioned is the toolkit with practical guidance on Early Childhood Education and Care that will be published at the beginning of 2021.

4.1.3. The Action Plan also mentions the need to facilitate the recognition of qualifications acquired in third countries. It puts forward several instruments to improve recognition of qualifications: the ENIC-NARIC networks, the Erasmus Programme, the EU Qualifications Framework, and the Europass portal. In addition to strengthening existing instruments, it is also important to identify and map existing barriers to recognition, including lack of trust and other social barriers.

4.1.4. The Commission emphasises the importance of language learning and proposes to further develop comprehensive and accessible language learning programmes. The EESC believes that language learning should be at the centre of actions in the areas of education and employment, starting from the first stages of the integration process. Learning the language of the receiving community ensures access to appropriate education and training levels, with far-reaching impacts on integration. Language learning programmes should therefore also be informed by a holistic approach (\(4\)).

4.1.5. Based on the upcoming objective of the Child Guarantee, it is important to recommend that Member States support greater access to education for migrant children by ensuring that immigration procedures do not interfere with schooling or with children's rights more broadly. Education should assess, meet and reasonably accommodate the individual needs of migrant children with disabilities, or other needs, in order to facilitate development of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential.

4.1.6. All actions in these areas should aim to achieve inclusive education systems at all levels and lifelong learning.

4.1.7. The Plan highlights the importance of gaining an understanding of the laws, culture and values of the receiving society as early as possible through civic orientation courses. The Commission proposes good-practice exchanges between Member States in these areas. Information about these matters should be provided in a way that is understandable and accessible to all.

4.2. Employment and skills

4.2.1. In this area, problem diagnosis and global targets are well defined, showing the importance of migrants’ contribution to the economy, especially in COVID-19 times. The Action Plan also stresses how not only migrant workers, but also migrant entrepreneurs, will be key to growth during and after the pandemic.

\(\text{\footnote{Concerning target language levels for integration, see also SOC/641 on Integration of women, mothers and families with a migrant background in the EU Member States and target language levels for integration (exploratory opinion requested by the German presidency) (OJ C 10, 11.1.2021, p. 1).}}\)
4.2.2. To achieve the objectives mentioned, the Action Plan encourages the use of existing EU tools, including the European Partnership for Integration, to work with social and economic partners, the Employers together for integration initiative, InvestEU supporting entrepreneurship, the European Integration Network, the European Network of Public Employment Service, and the Europass platform for sharing and scaling up skills assessment practices, the EU Skills Profile Tool for Third Country Nationals to facilitate the validation of skills, and the upcoming Citizens, Equality, Rights and Values programme to support people with a migrant background.

4.2.3. Among other objectives, the Action Plan also mentions overcoming the difficulties in access to financial services and information, but it proposes no specific action to resolve these difficulties. In this respect, the Action Plan should foster migrant workers’ empowerment by ensuring access to financial and legal information, complaint mechanisms, and safe reporting, in understandable and accessible formats.

4.2.4. The Action Plan rightly emphasises the importance of ensuring more effective and faster skills assessment systems or tests, also taking into account past experiences in this respect.

4.2.5. Nevertheless, skills assessment tools are not sufficient to ensure greater access to the job market, but action is needed to address distrust and discrimination. It is important to provide support and specific guidelines to national employment agencies and stakeholders in the employment sector to develop anti-discrimination policies and promote participation at all levels. It is also crucial to recommend national policies that ensure greater and smoother access for third country nationals to all employment sectors by easing visa procedures.

4.2.6. The Action Plan should further stress the importance of promoting greater access to apprenticeships, traineeships, vocational training and even volunteer work that may lead to a proper full-time job. This will provide migrants and residents with migration backgrounds with an opportunity to work, increase their skills level and have an income to support themselves and their families. Specifically, programmes promoting young people’s access to the labour market (e.g. the Youth Guarantee) should have specific provisions to guarantee the participation of third country nationals.

4.2.7. The Action Plan should also envisage targeted actions aimed at empowering migrant and refugee women and improving their access to the labour market, including by strengthening anti-trafficking measures and through specific needs support.

4.3. Health

4.3.1. Importantly, the Action Plan highlights that the COVID-19 pandemic has brought to the fore the existence of deep-seated inequalities in access to health services, and that this poses risks for society at large.

4.3.2. In light of the pandemic, the EESC considers that all migrants, including irregular migrants, should have access to basic healthcare, and specifically testing and vaccinations, in all EU Member States.

4.3.3. In terms of the proposed actions, the Commission refers to funding possibilities through the AMIF, the ESF+, the ERDF and under the upcoming Citizens, Equality, Rights and Values programme. The Action Plan rightly encourages the use of EU funding for the provision of health services.

4.3.4. The EESC emphasises that it is key to recommend that Member States remove barriers to accessing health services and barriers within health services, including through information campaigns on national health systems, assessing and meeting the individual health needs of migrants with disabilities.

4.3.5. The EESC highlights the importance of raising awareness about and promoting the mental health of the migrant population as part of the integration process, particularly in light of the ongoing pandemic, also by ensuring culturally sensitive mental health services.
4.3.6. Actions to ensure greater access to health services should also cover reception facilities for asylum applicants, particularly in the preparation of the new Health Programme.

4.4. Housing

4.4.1. The Commission will set up an Affordable Housing Initiative as announced under the Renovation Wave and promote non-segregated, dignified, accessible and affordable housing. Special attention will be paid to models of autonomous — as opposed to collective — housing for asylum applicants.

4.4.2. Among the objectives listed in this area, fighting discrimination in the housing market and reducing residential segregation should be top priorities.

4.4.3. This should also involve greater emphasis on expanding affordable housing, including social housing, through mainstreamed solutions that target third country nationals as well as all residents facing housing needs (5).

4.4.4. Member States should be encouraged to also use EU funding to design and enforce mechanisms for accessing justice in cases of exploitative housing.

4.5. Partnerships for a more effective integration process

4.5.1. The Commission intends to strengthen the European Integration Network by providing targeted funding and capacity-building to the Member States.

4.5.2. Special attention is given to support for local and regional authorities, including expansion of the Urban Academy on Integration and strengthening of inter-religious dialogue among communities, supporting cities in preventing radicalisation under the EU Cities against Radicalisation initiative launched in 2019. The EESC stresses the importance of inter-religious dialogue for integration.

4.5.3. The Action Plan also mentions the annual European Migration Forum organised in collaboration with the EESC, and with its IMI thematic study group in particular, as a way to support the consultation with civil society and diaspora organisations.

4.5.4. Finally, the Plan announces support for foundations and organisations through structural dialogue on migration integration and exploring possible tools for cooperation, without detailing what that support could be.

4.6. Increased opportunities for EU funding

4.6.1. Funding aspects run like a thread through all the actions proposed in the Plan, and are linked to the 2021-2027 MFF. An overview of the main EU funds that supported integration and inclusion under the 2014-2020 period is added, but no figures are given for the future. Here the EESC realises that it is necessary to wait for the programming phase to be completed to know how much Member States will allocate under each fund on integration issues.

4.6.2. The list of funds that can be used for integration and inclusion or that are relevant to the actions to support migrants is impressive, including the AMIF, the ESF+ and the ERDF. At the same time, synergies with other funds should be clarified, e.g. with Erasmus+, the Recovery and Resilience Facility, the EAFRD, and InvestEU. Once adopted, the Technical Support Instrument will also be able to provide support to Member States for developing or improving integration and inclusion policies. Finally, the upcoming Citizens, Equality, Rights and Values programme could also play a role in funding specific actions targeting EU citizens with a migrant background. It has been decided to have a large portfolio of possible funds, but a better solution might have been to opt for specific funds for integration matters. The EESC suggests that the Commission make access to funding easier, for instance by creating a dedicated instrument for the integration of migrants.

4.6.3. The European Child Guarantee is also important in this framework, as the most disadvantaged children also include children with a migrant background.

4.6.4. The complexity of EU funding makes it necessary to update the toolkit developed in 2018 for using funds for integration during the 2021-2027 programming period.

4.6.5. Another interesting aspect of funding policy is the Commission’s intention to develop public-private partnerships with foundations and private donors.

4.7. Fostering participation and encounters with the host society

4.7.1. The EESC welcomes the idea of involving the newly-created expert group on the views of migrants, composed of migrants and organisations representing them, in the design and implementation of future policies on migration, asylum, and integration. This could contribute to improving the participation of migrants and EU citizens with migration backgrounds in the consultative process and also ensure that policies reflect real needs. For these reasons, it is important that opportunities for two-way exchanges between third-country nationals and receiving communities be created starting from the early stages of reception and integration.

4.7.2. The objective of the Action Plan is to promote dialogue and raise awareness among all Europeans about the realities of integration and migration. But this objective risks being too vague, despite the clear efforts made to raise awareness about facts and figures. Changing the narrative on migration in the public mind is an absolute must, and the EESC wonders what will be done to achieve that.

4.7.3. The EESC supports initiatives such as football festivals that target young migrants in the host cities of EU championships, which could have a positive impact on migration positive narratives. Other ad hoc measures of this kind, however, like integration awards for local schools or communities/organisations, may reinforce perceived differences, and stigmatise certain groups.

4.8. Enhance the use of new technologies and digital tools

4.8.1. The Commission’s Action Plan rightly acknowledges the real risk of a digital gap between migrants and natives for different reasons: 8.1% of people born outside Europe cannot afford a computer, compared to 3.1% of natives, and parents from migrant households may have more difficulties supporting their children with remote learning.

4.8.2. The Action Plan recommends increasing the digital literacy of the migrant population, but does not contain specific proposals, or targets on how this should be achieved in practice.

4.8.3. An interesting idea is the engagement of migrants in creating and delivering digital public services. The EESC assumes that this has already been achieved in relation to EU administrative activities.

4.9. Monitoring progress: towards an evidence-based integration and inclusion policy

4.9.1. The EESC welcomes the objective of achieving a more evidence-based debate on migration. If better data and presentation tools can contribute to this objective, they must be collected, developed and spread. EU indicators on integration have existed since 2010, but despite extensive efforts knowledge gaps remain. In this respect, useful tools could be a new barometer and a joint scoreboard to support comparison across countries and over time.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Ensuring justice in the EU — A European judicial training strategy for 2021-2024”’

(COM(2020) 713 final)

(2021/C 286/24)

Rapporteur: Elena CALISTRU

Referral
European Commission, 24.2.2021

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Employment, Social Affairs and Citizenship

Adopted in section
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Outcome of vote
(for/against/abstentions) 240/3/0

1. Conclusions and recommendations

1.1. Judicial training on EU law has improved the correct and uniform application of EU law and built mutual trust in cross-border judicial proceedings, thus helping to develop the EU area of justice. The strategy builds on the success of previous efforts and seeks to maintain judicial training high on the EU agenda, with a special focus on dealing with emerging challenges such as the green transition or new industrial relations and adapting to the new technological era.

1.2. By providing adequate resources, support and training, justice practitioners in all Member States can respond to the needs of citizens, workers and business across the EU. Well trained practitioners play an important role in strengthening a rule of law culture and upholding the rule of law itself, promoting European values and principles such as judicial independence and supporting the effective observation of fundamental rights at EU and national level.

1.3. Ongoing developments in the labour market are increasingly raising questions regarding the status and rules applicable to workers and upcoming new forms of work. Courts decisions from the Member States differ in similar or identical situation on this matter, even in cases regarding the same company. In order to ensure a unitary jurisprudence and a proper functioning of the internal market it is necessary to ensure guidelines and training for the judiciary.

1.4. The EESC fully understands and acknowledges that the Commission merely has a supporting role in judicial training, while the national stakeholders have the primary responsibility. Nevertheless, adequate strategic integration and financial support for the implementation of the strategy should be a common concern.

1.5. Given the EU-level challenge and the growing number of issues with an EU dimension (i.e. protection of the financial interests of the EU in new financial mechanisms, digital and green transition), it is increasingly important to lay down rules for a more homogeneous approach across Member States when it comes to judicial training.

1.6. To the same extent, the Committee acknowledges the importance the Commission attaches to regularly monitoring the implementation of the strategy and working with the other EU institutions to secure the requisite political support for delivering on the objectives. The EESC strongly recommends that the Commission find ways in which CSOs and social partners could be included in monitoring the implementation of the strategy, both at EU and Member State level.
1.7. In order to protect the EU’s financial interests, environmental issues and the Union’s rights, the EESC considers that the protection and the rights of whistleblowers, who play a key role in preventing abuses linked to fraud and corruption, as well as any infringement of the Union’s rights, should be included in the training of justice practitioners.

1.8. European judicial training should go beyond legal education and the Committee particularly welcomes the focus on ‘judgecraft’ as a central element for the efficiency of justice. The EESC supports the development of professional skills in complementary fields, such as ethics, forensics and psychology, and ensuring that legal professionals have the necessary understanding of technical elements that most of the time are dealt with in various fields of EU legislation, such as the environment, infrastructure or finance/banking.

1.9. Similarly, in the context of digitalisation and in particular when using artificial intelligence tools in the judicial system, the EESC recommends specific training. In particular, knowledge and application of the principles of the European Ethical Charter for the Use of Artificial Intelligence in Judicial Systems, should be strongly pursued and recommended.

2. Background

2.1. The evaluation of the 2011-2020 European judicial training strategy shows that it has helped improve training on EU law for legal practitioners (especially judges and prosecutors), built the capacities of networks such as the European Judicial Training Network (EJTN) and reinforced EU level networks and training providers.

2.2. New developments and challenges need to be addressed by judicial training at EU level. They include a deterioration of the rule of law, attacks on fundamental rights in some Member States, new fields of regulation at the EU level but also the digital transition.

2.3. The 2021-2024 European judicial training strategy aims to consolidate a common European judicial culture based on the rule of law, fundamental rights and mutual trust. It proposes a framework and a set of key actions to boost the correct and effective application of EU law. Member States, training providers, national and European justice professionals’ organisations and the EU are called on to address the following priorities, through shared responsibility:

— judicial training to promote a common rule of law culture;

— upholding fundamental rights and making the EU Charter of Fundamental Rights a reality in people’s everyday lives, with an emphasis on protecting victims and vulnerable individuals;

— upscaling the digitalisation of justice;

— keeping pace with developments in EU law, including cross-border judicial cooperation;

— equipping practitioners to address new challenges, especially in the wake of the pandemic;

— training beyond EU law, such as on ‘judgecraft’ and non-legal knowledge and skills;

— creating and implementing a more hands-on, practical, tailored training agenda for justice professionals;

— increased, broader and more targeted training for different categories of justice professionals;

— promoting high-quality, effective training activities, including diverse forms of learning with an emphasis on hybrid and/or e-learning methods and using tried and tested curricula;

— boosting judicial training for young practitioners;

— enhancing the shared responsibility of national stakeholders, networks of EU law experts, the European Judicial Training Network, other EU-level actors and the Commission;
— targeting justice professionals beyond the EU, in particular from the Western Balkans.

3. General comments

3.1. The COVID-19 crisis has caused considerable difficulties for the workings of the judicial system but also created several new challenges that justice practitioners must address. The EESC welcomes the attention paid to the need to ensure not only the infrastructure for the digital transition, but also the investment in the skills of practitioners who will have to be part of this digital transformation.

3.2. There is an important caveat — the implementation of the strategy is impossible without the participation of all stakeholders, including justice ministries, councils for the judiciary and prosecution, boards of self-regulated professions, European associations of justice professionals, national and EU-level training providers, and EU institutions and bodies. The EESC joins the Commission in its call for these actors to commit to achieving the quantitative and qualitative objectives of the strategy.

3.3. The EESC recalls the conclusions from numerous previous opinions (1) stating that consistency in access to justice across the EU is an essential factor underpinning the single market and the consistent implementation of EU legal rights in the Union, providing necessary clarity and certainty for citizens and businesses, as there still are significant differences in the application of the EU acquis between the Member States. To this end, it is essential to support Member States at national level by providing them not only with the necessary complementary funding (including through the recovery and resilience resources), but also with the tools to ensure that all stakeholders and those working in the field of justice are ready to join this effort.

3.4. To the same extent, we acknowledge the importance the Commission attaches to regularly monitoring the implementation of the strategy and working with the other EU institutions to secure the requisite political support for delivering on the objectives. The EESC invites the Commission to find ways in which CSOs and social partners could be included in monitoring the implementation of the strategy, both at EU and Member State level.

3.5. The EESC agrees that the well trained practitioners play an important role in strengthening a rule of law culture and upholding the rule of law itself, promoting European values and principles such as judicial independence and supporting the effective observation of fundamental rights at EU and national level. However, we stress the importance of providing adequate resources, support and training as part of a larger effort to ensure that justice practitioners in all Member States can respond to the needs of citizens and business across the EU, with the observation of the same standards and values.

3.6. Since its creation in 2018, the EESC Fundamental Rights and Rule of Law (FRRL) Group has paid attention to stakeholders’ views on issues relating to the quality and independence of the judiciary. The EESC agrees that well trained practitioners play an important role in strengthening a rule of law culture and upholding the rule of law itself, promoting European values and principles such as judicial independence and supporting the effective observation of fundamental rights at EU and national level.

4. Specific comments

4.1. We welcome the continuous commitment to essential training for justice practitioners in Member States, particularly through the observation of the EU acquis in the area of rule of law and the effective implementation of Member States’ commitments to fundamental rights (including the rights of specific vulnerable groups such as children, persons with disabilities, victims of gender-based violence, racism and discrimination).

4.2. Ongoing developments in the labour market are increasingly raising questions regarding the status and rules applicable to workers and upcoming new forms of work. Courts decisions from the Member States differ in similar or identical situation on this matter, even in cases regarding the same company. In order to ensure a unitary jurisprudence and a proper functioning of the internal market it is necessary to ensure guidelines and training for the judiciary.

4.3. One other element that is emphasised is the need to continue training activities in the areas considered problematic under the EU security agenda, such as cybercrime, organised crime and financial crimes that impact the EU budget, especially in the new context of creating the EPPO. This should be an ongoing concern for all stakeholders and appropriate resources should be allocated to this end.

4.4. On the subject of protecting the EU’s financial and environmental interests, the EESC considers that the training of justice practitioners must include the protection of whistleblowers, whose rights are still too little known and who, through their reporting, play a key role in preventing abuses linked to fraud and corruption and any infringement of the Union’s rights.

4.5. One of the most important issues will be related to taking the justice sector forward in the digital area. However, the EESC notes that there are significant differences in the national contexts and that the judicial systems in the Member States are at different stages of digitalisation. The proposed strategy takes into account the national competences and respects the principle of subsidiarity. At the same time, it is important that all Member States work towards reducing the existing digitalisation gaps not only through ensuring infrastructure investment, but also the skills for justice professionals who will need to make the digital transformation a reality.

4.6. Without the digitalisation of justice at national level and investment in the training of justice practitioners to use digital tools and technologies in their daily practice, it will be hard to facilitate closer cross-border cooperation between judicial authorities. Moreover, without adequate and cohesive investment in training not only in digital skills, but also awareness, new challenges will be hard to address (both issues like adequate protection of individuals’ rights and personal data in the digital space as well as new issues such as cybercrime).

4.7. In the context of digitalisation and in particular when using artificial intelligence tools in the judicial system, the EESC recommends specific training on the issue. Respect of fundamental rights, preventing discrimination, using good quality data in judicial decisions, and respect for the ‘human in command’ approach are, among other things, contained in the European Ethical Charter for the Use of Artificial Intelligence in Judicial Systems (2). It is of the utmost importance to make these principles known and respected through training.

4.8. The acknowledgement that European judicial training should go beyond legal education and support the development of professional skills is welcome. In particular, we note the focus on training in ‘judgecraft’ as a central element for the efficiency of justice, the relationship of trust between justice systems and members of the public, and trust between practitioners in cross-border cooperation.

4.9. Another key point that needs to be addressed is the training of justice practitioners in complementary fields, such as ethics, forensics and psychology, and ensuring that legal professionals have the necessary understanding of technical elements that most of the time are dealt with in various fields of EU legislation, such as the environment, infrastructure or finance/banking.

4.10. The EESC also appreciates the focus on a broader range of justice professionals who apply EU law, including — first and foremost — judges, prosecutors and court staff, but also professionals such as lawyers, notaries, bailiffs, mediators, legal interpreters/ translators, court experts, and in certain situations prison staff and probation officers. Nevertheless, particular attention should be paid to the highly varied picture across Member States, with a diverse range of specific national circumstances that could make even implementation of the strategy rather difficult.

4.11. The EESC also agrees that training should be of a high enough quality to achieve its objectives, that needs assessment is mandatory, but also that justice practitioners need exposure to diverse forms of learning, including a blend of face-to-face residential activities, e-learning tools and on-the-job training. The EESC is concerned, however, that common methodologies and national training providers will not be enough in this regard, and that, although there are currently plenty of resources, good practices and guides at EU level, Member States are not fully committed to using them.

(2) https://rm.coe.int/charte-ethique-fr-pour-publication-4-decembre-2018/16808f699b
4.12. The unique role and results of the European Judicial Training Network is an ongoing experience from which we can learn, and we welcome the focus on the role to be played by EU-level actors in promoting and organising cross-border training activities, while multiplying the training effects.

4.13. The role of European judicial training in promoting a common rule of law culture is also present in the focus on justice professionals beyond the EU or the special emphasis on ensuring that new justice professionals are given a grounding in the EU legal system and legal culture in the course of their initial training.

4.14. The Commission’s efforts to encourage participation of justice professionals from non-EU countries — particularly the Western Balkans region — in training on the rule of law *acquis* or on cross-border judicial cooperation, is also welcomed. The EESC has constantly underlined (*) the need to support the rule of law and independent justice for the candidate countries and potential candidates for EU membership.

4.15. The EESC also draws attention to the need to acknowledge the post-Brexit challenges that might arise for professionals in the judicial system. This is of particular importance in the context of the EU-UK Trade and Cooperation Agreement that was concluded, but also for law enforcement and judicial cooperation in criminal matters and for making sure that fundamental rights are respected.

4.16. Last but not least, with a view to ensuring the sustainability of the proposed actions, the EESC emphasises the need to involve, beyond the stakeholders from the judiciary, CSOs and professional associations of justice practitioners and justice-seekers from particular fields (environment, public procurement, healthcare, consumers protection, workers’ rights and industrial relations etc.). Strong involvement by civil society and social partners can make an additional contribution to strengthening democracy, human rights and the rule of law.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate)’

(COM(2021) 130 final — 2021/0068 (COD))

(2021/C 286/25)

Rapporteur: George VERNICOS

Referral
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(for/against/abstentions) 251/0/4

1. Conclusions and recommendations

1.1. The COVID-19 pandemic has brought an exceptional shock for our economies, societies and lives and tourism sector is affected to an unprecedented scope. The current crisis revealed the importance of tourism for Europe, not only from an economic point of view, but also in terms of living together and forging a common destiny.

1.2. The EESC maintains that the ‘Digital Green Certificate’, should minimize complexity for travelling passengers and facilitates their movement during the COVID-19 pandemic.

1.3. The EESC believes that is necessary to clarify that the possession of a ‘Digital Green Certificate’ is not a precondition for the exercise of free movement and that the proposed Regulation does not establish an obligation or right to be vaccinated. However, it recommends that, especially, socially marginalised and disadvantaged groups must have access to relevant information and the impact of the Green Certificate on these groups must be properly assessed and monitored.

1.4. The EESC underlines that the possession of the Green Certificate should not exempt travellers from complying with other risk reduction measures, but should be considered a transition strategy for countries that demand a permanent mechanism for constant re-evaluation after its adoption.

1.5. The EESC points out that all European countries should work together to achieve uniform framework conditions (i.e., content, format, principles and technical standards of the certificate) as soon as possible because we cannot afford to lose another summer of tourism.

1.6. The EESC points out that travel protocols must be clear and applicable to international travel by air, road and sea.

1.7. The EESC stresses out that, since personal data include sensitive medical data, it is crucial for all Member States to have interoperable systems with equally strong data protection provisions. The Digital Green Certificate must not require the setting up and maintenance of a central database at EU level. The EESC also recommends that the Digital Green Certificate be organised in a way that the information about which category is fulfilled to travel is only visible to the traveller.
1.8. The EESC would also like to raise the attention that the Digital Green Certificate will also serve to facilitate travel for business. This must not lead to discrimination in the workplace or to misuse by employing vaccinated persons from third countries in jobs where working conditions are poor.

1.9. The EESC calls upon the Commission and the Member States to ensure that the certificate, as well as updating it, remains free of charge.

1.10. The EESC highlights the need to speed up vaccination, by boosting vaccine production and ensuring more transparency and predictability in order to guarantee an adequate number of vaccines across the EU through a coordinated and unified approach. At the same time, countries should further invest in educational campaigns about the benefits of vaccination to fight disinformation.

1.11. In the EESC's view, there is a need to add self-tests and the blood test on COVID antibodies as more methods for getting the Digital Green certificate.

1.12. The EESC supports that, in order to avoid unequal restrictions on the freedom of movement for those who have not been vaccinated, European governments should ensure easy and free of charge access to testing for all citizens.

1.13. The EESC believes that the Certificate must be recognized in every EU Member State, so as to pave the way for the establishment of full freedom of movement inside the EU during the COVID-19 pandemic.

2. Background

2.1. To ensure a well-coordinated, predictable and transparent approach to the adoption of restrictions on freedom of movement in response to the COVID-19 pandemic, the Council adopted, on 13 October 2020, the Council Recommendation (EU) 2020/1475 (1).

However, in reality this Recommendation was hardly enforced, whilst different individual Member States' restrictions were applied.

2.2. More importantly, in the declaration adopted following the informal video conferences on 25-26 February 2021, the members of the European Council asked for further work towards a common approach to vaccination certificates. The Commission has worked with Member States in the e-Health Network — a voluntary network of national e-Health authorities — to prepare the interoperability of these certificates. The e-Health Network also agreed on common harmonised data sets for COVID-19 vaccination, test and recovery certificates and agreed on a trust framework outline on 12 March 2021.

2.3. Based on the technical work done so far, the Commission put forward, on 17 March 2021, a proposal for a Regulation on a Digital Green Certificate, which is a framework for the issuance, verification and acceptance of interoperable health certificates on vaccination, testing and recovery, to facilitate free movement in the EU (2021/0068 (COD)) and an accompanying proposal on third country nationals legally staying or residing in the EU (2021/0071 (COD)).

The planned European certificate would provide, while respecting fundamental rights, including privacy and non-discrimination:

— proof that a person has been vaccinated against COVID-19, and/or

— results of recent tests for SARS-CoV-2 infection, and/or

— information on a person's recovery, from a SARS-CoV-2 infection.

(1) OJ L 337, 14.10.2020, p. 3.
2.4. It will be available to EU citizens and their family members, non-EU nationals who reside in the EU, and visitors who have the right to travel to other Member States. It will be valid in all EU Member States and in Iceland, Liechtenstein, Norway through incorporation into the EEA agreement. Switzerland can decide to introduce it as well.

2.5. National authorities in EU Member States (hospitals, test centres, or health authorities) will be responsible for its issuance. The certificate will include the individuals’ name, date of birth, date of issuance, information about the vaccine, test or recovery status, and a unique identifier. A QR code will be produced to authenticate the certificate, ensure the security of data, and protect against falsification.

2.6. The proposal does not oblige Member States to waive restrictions on free movement (insofar as they are necessary to protect public health) for travellers with Green Certificate but it provides them with reliable, authentic and harmonised documents when doing so. It is therefore obvious that there will remain a margin for discretion, although the proposed framework recommends that restrictions be limited to what is absolutely necessary and contains a presumption that restrictions will be lifted for certificate holders by requiring Member States to inform other Member States and the Commission if they continue to impose them.

2.7. The proposed system leaves the door open for updates based on new scientific evidence on the efficacy of vaccines in halting the transmission of SARS-CoV2 and the duration of protective immunity from prior infection. Currently the framework sets the maximum validity period of the certificate of recovery from a previous COVID-19 infection at 180 days. According to the Proposal, the Digital Green Certificate will be suspended once the World Health Organization (WHO) declares the end of the COVID-19 international health emergency, but could be re-activated for future pandemics.

3. General comments on the current crisis of the tourism sector

3.1. The tourism sector, a highly dynamic and interconnected sector, constitutes one of the economic engines of Europe which represents 50% (2) of the global tourism. In countries at all development levels, many millions of jobs and businesses depend on a strong and thriving tourism sector. Directly and indirectly, tourism sector contributes nearly 10% to EU GDP.

3.2. The COVID-19 pandemic brought an exceptional shock for our economies, societies and lives. To limit the spread of the virus across national borders, countries have been using a combination of measures, some of which have had a negative impact on travelling to and within Member States.

Tourism is affected to an unprecedented scope, with 2020 being the worst year on record for tourism. Europe saw a decline of 69% in arrivals in 2020 and a decline of 85% in January 2021 (3).

3.3. The situation is particularly difficult in the EU countries that are key tourist destinations, namely Italy, Greece, Portugal, Malta, Cyprus, Spain and France. The EU tourism industry, which employs around 13 million people (4), is estimated to be losing around EUR 1 billion in revenue per month, as a result of the COVID-19 outbreak.

3.4. The fact that more than a third of the tourism value added generated in the domestic economy comes from indirect impacts, reveals the breadth and depth of linkages between tourism and other sectors (5). As a result, the reduction of tourist flows is having a severe impact on the wider economy (6).

(2) The largest volume of arrivals during the period 2014-18 is recorded in Europe, which represents for all years more than 50.0% of outbound trips worldwide. Travelling to European destinations in the period 2014-18, increased by +24.3%.

(3) UNWTO March 2021.

(4) Eurostat.

(5) The importance of indirect losses due to inter-sectoral linkages in the tourism industry is also emphasised by the United Nations Conference on Trade and Development (Unc ted), so that losses in GDP are estimated to be approximately two to three times higher than the immediate loss in international tourist revenue. The Unctad report estimated that the direct and indirect losses to world tourism caused by COVID-19 could amount to about 4% of world GDP, but with diverse impacts across countries reflecting their exposure to travel and tourism.

(6) OECD Economic Outlook December 2020 database and World Travel & Tourism Council database.
3.5. Concerning the tourist sector, it is also important to underline its social impact. Tourism contributes to the development of rural communities, providing additional sources of income and enabling in this manner a balanced territorial development of our societies. Tourism has also been a driving force in protecting natural and cultural heritage, preserving them for future generations.

3.6. Looking ahead the World Tourism Organisation estimates a possible rebound in international travel in the second half of the year. This is based on a number of factors, most notably a major lifting of travel restrictions, the success of vaccination programmes and the introduction of harmonized protocols, such as the Digital Green Certificate planned by the European Commission.

4. Specific comments on the proposal for a Regulation for the Digital Green Certificate

4.1. The EESC supports the Commission’s initiative to work with Member States in the e-Health Network, on preparing the interoperability of vaccination certificates, in order to establish a commonly workable solution, eliminate complexity, limit dataset for vaccination certificates at the absolutely minimum for the protection of holders' sensitive data, and develop a unique identifier. Absence to act at an EU level would likely result in Member States adopting different, not coordinated and complicated systems.

4.2. The EESC points out that the introduction of the ‘Green Certificate’ is an excellent common standard to facilitate administrative bureaucracy, however it cannot be considered the ‘free movement key accelerator’. Free movement will remain subject to national restrictions which are merely defined by each State's ability and health system's capacity. As a result, measures applicable to cross-border travellers (for instance, quarantine or self-isolation, additional and repetitive testing, prior to and/or after arrival) will remain available and at the discretion of Member States, although the proposed framework provides certain recommendations for the States to be limited to absolutely necessary restrictions.

4.3. The EESC underlines that the possession of the Green Certificate should not exempt travellers from complying with other risk reduction measures, but should be considered a transition strategy for countries to apply when the epidemiological context may warrant easing of travel restrictions, while still requiring the use of safeguards to make travel safer. There is uncertainty regarding the efficiency of vaccines in reducing transmission or for certain mutations and the extent and duration of antibody-mediated immunity against SARS-CoV-2 reinflection. Moreover, there remain questions about the validity of tests. Therefore, the EESC strongly recommends accompanying measures to protect the health of travellers and workers, especially in closed and crowded places.

4.4. The EESC points out that effective and urgent actions are needed such as stronger coordination on travel protocols between countries to ensure the safe restart of tourism because we cannot afford to lose another summer of tourism. The pandemic is a global problem and needs global approach and trust to be solved — individual country solutions will not work.

4.5. The EESC underlines that for the Green certificate to be effective, it needs to be fully interoperable, secure and verifiable. For this reason, all European countries should work together to achieve uniform framework conditions (i.e., content, format, principles and technical standards of the certificate) as soon as possible. This includes common standards how long (and which) tests and vaccines are valid and people certify as ‘recovered’.

The EESC points out that travel protocols must be clear and applicable to international travel by air, road and sea. It should be noted that the application of the Green Certificate is a joint responsibility of border authorities and carriers.

4.6. According to the EESC, the Green Certificate is designed to be as simple as possible, implemented as a package, relies on trust among the involved countries and will also need a permanent mechanism for constant re-evaluation after its adoption.
4.7. The EESC supports that the following principles must underpin the system: a) the green certificate should aim to reduce the impact of the risk to a residual level that is considered acceptable by national authorities and in line with the WHO, b) restrictions on international travel should be commensurate with the epidemiological situation in the country of origin and destination, c) quarantine could continue to be an instrument available to authorities when appropriate, d) countries participating in the system will accept tests that have been approved by the national authorities of other participating countries, e) the complexity of processes and amount of information collected and transferred across borders should be minimised, f) the system should be interoperable and based on a common nomenclature and format for information transfers, g) the system should abide by the principles of 'privacy by design', in which the contents, collection mode, purpose for collection, and length of storage for any or all data being collected will be made clear to the data subject at the outset.

4.8. Vaccination campaign and rules on vaccine and certifications remain at the exclusive competence and responsibility of national governments. No Member State has chosen to make vaccination compulsory (except in special cases such as Italy in the nursing staff) and it seems very unlikely that they will do so in the coming months.

However universal and equitable access to a safe and effective COVID-19 vaccine is essential to save lives, safeguard the public health system and enable economies to rebuild. The EESC highlights the need to speed up vaccination, by boosting vaccine production and ensuring more transparency and predictability in order to guarantee an adequate number of vaccines across the EU through a coordinated and unified approach. This is also an important precondition for the functioning of the Digital Green Certificate and the equal treatment of citizens.

4.9. European governments should use pandemic recovery funds for vaccination programs aimed at parts of the population that would otherwise be more difficult to reach, such as those living in rural or less affluent areas far from hospitals and clinics. Furthermore, any discrimination concerning ethnic minorities should be avoided.

The EU should also further invest in educational campaigns about the benefits of the vaccine. This would help fight disinformation that make people reluctant to vaccinate.

4.10. The EESC supports that, in order to avoid unequal restrictions on the freedom of movement for those who have not been vaccinated, European governments should ensure easy and free of charge access to testing (and quickly obtaining test results) for all citizens, especially considering a possible gap between rural and urban areas.

4.11. The EESC believes that it is necessary to clarify that the possession of a 'digital green certificate' is not a precondition for the exercise of free movement and that the proposed Regulation does not establish an obligation or right to be vaccinated. The EESC points out that every kind of immunity certification raises ethical questions concerning respect, individual rights and interests, public health responsibility and social justice. Such impact, especially on socially marginalised and disadvantaged groups, must be properly assessed and monitored.

4.12. The EESC points out that the digital green certificate supports the much-needed recovery of the travel and tourism sector. It is also a very important certificate for business traveling and any other social gathering what will boost economy and cultural and other social events and will have positive effect on health (mentally or physically) of people in general. The Commission and the Member States must ensure that the certificate, as well as updating it, remains free of charge, as indicated in Article 3(3). The certificate should have a QR code to help ensure security and authenticity and in the official language(s) of the issuing Member State as well as in English. The certificate must be recognized in every EU Member State, so as to pave the way for the establishment of full freedom of movement inside the EU during the COVID-19 pandemic.

4.13. The EESC wants to raise the attention that the Digital Green Certificate will not only be used for tourism. It will also serve to facilitate travel for business purposes within Europe, but may disadvantage individual workers. The EESC recommends that Member States take precautions that this does not lead to discrimination in the workplace and does not impact employability. Moreover, the EESC cautions against the regulation being misused to facilitate the entry of vaccinated persons from third countries to work in jobs where working conditions are poor.
4.14. The EESC adds that the Commission and the Member States should establish a digital trust framework infrastructure allowing for the secure issuance and verification of certificates and support Member States in the technical implementation ensuring, as far as possible, interoperability with internationally established technology systems.

4.15. The EESC stresses out that, since personal data include sensitive medical data, a very high level of data protection must be ensured and data minimisation principles should be preserved.

In particular, the ‘Digital Green Certificate’ framework must not require the setting up and maintenance of a database at EU level but should allow for the decentralised verification of digitally signed interoperable certificates. Governments must also ensure that personal data are kept safe and not shared or misused for other purposes. Apart from that, the respective data must only be processed for the purpose of the Digital Green Certificate and the competent authorities must ensure that data is deleted afterwards. If the Green Certificate is required for travel between countries, then it is crucial for all Member States to have interoperable systems with equally strong data protection provisions and provide for the obligation of data controllers to consult their national data protection supervisory authorities prior to processing any data. The EESC recommends to the involvement of data protection experts on European and national level, in order to ensure a proper implementation.

4.16. The EESC also cautions about the Digital Green Certificate revealing sensitive personal medical data about travellers’ status as regards to vaccination, antibodies or testing. Therefore, the EESC recommends that the Digital Green Certificate be organised in a way, that this information is only visible to the traveller and any third person only sees that they fulfil a condition.

4.17. In the EESC’s view, there is a need to add self-tests and the blood test on COVID antibodies as more methods for getting the Digital Green certificate. The practice showed that the blood test on COVID antibodies is same relevant as the COVID recovery certificate.

4.18. According to the EESC, it must become clear what would happen with the vaccines currently under rolling review by the EMA. This is a particular issue for the EU countries that have been using such vaccines.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — An EU Strategy to harness the potential of offshore renewable energy for a climate neutral future’

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Rapporteur: Marcin Wiesław NOWACKI

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(for/against/abstentions) 239/1/4

1. Conclusions and recommendations

1.1. The EESC welcomes this strategy, which aims to harness the potential of offshore renewable energy for a climate neutral future.

1.2. The EESC welcomes the proposals to include marine renewable energy development objectives when drawing up national and regional maritime spatial management plans.

1.3. The Committee considers that the strategy should include calculations of the contribution of wind energy to reducing greenhouse gas emissions to net zero in 2050.

1.4. The EESC welcomes the view that a well-regulated energy market should provide appropriate investment signals. In the Committee’s view, a predictable and stable regulatory environment plays a key role in the development of offshore wind energy.

1.5. Given certain characteristics, such as depth and proximity to other countries, the EESC notes that the installation of hybrid projects is only possible in the North Sea and the Baltic Sea. Moreover, in view of the expected pace of development, the EESC believes that in the first instance, EU and national action should focus on unleashing the potential of the most advanced projects which are planned to be connected to the national electricity system in a radial form.

1.6. The EESC is disappointed by the perfunctory way in which the strategy addresses the issue of recycling used wind turbines and recommends that the Commission pay due attention to the issue of decommissioning costs. The EESC would like to highlight the fact that clean energy would improve not only air quality in the local environment, but the environment and climate as a whole.

1.7. The EESC welcomes the identification of potential for the North Sea, the Baltic Sea, the Mediterranean Sea, the Black Sea, the EU Atlantic Ocean and the EU’s islands. It is understandable to prioritise the creation of new projects in the North Sea basin given the opportunities offered by existing infrastructure there. However, in order to ensure the security of energy supply as well as social and economic cohesion within the EU, the Committee stresses the need for proportionate investment in offshore wind farms in all EU basins.
1.8. The EESC supports the proposal to amend the TEN-E Regulation to include the one-stop-shop principle for offshore energy projects.

1.9. The EESC is concerned about the lack of details regarding specific measures and support instruments, which may put the financing of renewables at risk. In the Committee's view, a single instrument dedicated to financing offshore wind energy projects should be created within existing programmes. Moreover, such an approach should be extended to other types of renewable energy sources, like onshore wind and photovoltaic power, in keeping with the aspirations of the European Energy Union and the Renewable Energy Directive II, which precisely see more decentralised and regional generation facilities as making a contribution to generating additional potential for regional value creation, to creating jobs, and to putting the public at the heart of policy and making them active producers and prosumers. In this connection, the EESC notes with some concern that the Commission is currently dealing 'only' with offshore and hydrogen technologies, but is neglecting these decentralised approaches.

1.10. The Committee points out that any investment in offshore wind farms should contribute as much as possible to the socioeconomic development of the regions in the immediate vicinity of the investment by promoting participation in the project — the ‘local content factor’.

1.11. The EESC welcomes the fact that the strategy is to be complemented by a plan for the development of skills and education systems in the field of offshore wind energy.

1.12. The EESC recognises the EU's desire to take the lead in the offshore wind energy sector and is pleased to support the expansion of wind energy on land as well as at sea. It therefore expects the Commission to complement the offshore strategy with an onshore strategy as soon as possible.

2. Introduction

2.1. The subject of this opinion is An EU Strategy to harness the potential of offshore renewable energy for a climate neutral future, published on 18 November 2020. This strategy is an integral part of the European Green Deal.

2.2. The impact assessment accompanying the 2030 Climate Target Plan foresees that by 2030 more than 80% of electricity should come from renewable energy sources and that meeting the 2050 climate target requires offshore wind power of an estimated capacity of 300 GW, which will need to be complemented by approximately 40 GW of ocean energy. The strategy discussed in this opinion shows how the EU can achieve this.

3. General comments

3.1. The strategy aims to speed up the clean energy transition while retaining the important goals of economic growth and job creation in Europe. The main reasons for introducing this strategy are:

— Implementing the commitments of the first global agreement on mitigating climate change (Paris 2015),

— Restoring the competitiveness of the European economy by increasing energy efficiency,

— Creating new jobs by increasing the volume of investment, which will help mitigate the socioeconomic impact of the COVID-19 pandemic and contribute to the development of the European economy.

3.2. According to this strategy, offshore wind capacity will be increased from the current level of 12 GW to at least 60 GW by 2030 and to 300 GW by 2050. Furthermore, the Commission intends to add 40 GW of ocean energy and other emerging technologies such as floating wind and floating photovoltaic installations by 2050.
3.3. Investments worth an estimated EUR 800 billion are needed to achieve these objectives. Greater involvement of the EU and of Member States’ governments is also needed, as under current policies the present and projected installation capacity would lead to only approximately 90 GW in 2050.

3.4. The EESC welcomes the presentation of this strategy, which includes regulatory proposals and measures that make it possible to focus on developing, strengthening and deepening of cooperation on offshore wind energy.

3.5. The Committee notes that the data and information mentioned above illustrate the scale of the challenges faced by investors, EU industry and transmission and distribution system operators. The strategy presents optimistic prospects such as opportunities to boost private investment or create new jobs. However, the Committee notes that the strategy only makes use of vague information on predictions for the development of offshore wind energy in the context of job creation. Moreover, it is important to note that additional jobs will be created not just in the energy sector but also in onshore activities such as port development and shipping. Similarly, the strategy addresses the impact of the industry’s development on EU GDP.

3.6. The EESC notes that the strategy draws on an interconnected environment, in which the offshore renewables industry has to cohabitate with a number of ‘other activities at sea’ (tourism, fisheries, aquaculture etc.), hybrid projects interact with cross-border interconnectors, development is driven by targets set in multiple countries, and landlocked countries may finance offshore projects. Since offshore projects are co-financed by the EU, the EESC recommends ensuring transparency on the issue of burden and benefit sharing.

3.7. The EESC is disappointed that the strategy does not include calculations of the contribution of wind energy to reducing greenhouse gas emissions to net zero in 2050. Focusing only on installed capacity means that this key factor for achieving the objectives of the Green Deal is overlooked.

4. Outlook for offshore renewable energy technologies

4.1. EU offshore installations generate 12 GW, which is equivalent to 42% of the world’s offshore wind capacity. Most projects are turbines located on the seabed. The Committee believes that this technology has reached a certain degree of maturity, which is illustrated by a 44% reduction in the LCOE for offshore wind energy over 10 years.

4.2. The Committee has doubts as to whether the offshore wind energy development strategy should be based on developing technologies such as hybrid projects, and draws attention to the need to generate competitively priced energy that will make it possible to rebuild the EU economy after the coronavirus crisis.

5. The EU’s sea basins: a vast and varied potential to deploy offshore renewables

5.1. The EESC welcomes the identification of potential for the North Sea, the Baltic Sea, the Mediterranean Sea, the Black Sea, the EU Atlantic Ocean and the EU’s islands. Determining the potential for sea basins in the strategy will allow regulatory action to be properly planned and the objectives to be achieved.

5.2. It is understandable to prioritise the creation of new projects in the North Sea basin given the opportunities offered by existing infrastructure there. However, in order to ensure the security of energy supply as well as social and economic cohesion within the EU, the Committee stresses the need for an energy mix that is not overly reliant on one source of energy, as well as proportionate investment in offshore wind farms in all EU basins.

5.3. At the same time, the Committee notes that the offshore wind energy development strategy is moving towards regionalisation.
6. Maritime spatial planning for sustainable management of space and resources

6.1. In order to speed up the development of wind energy, it is necessary to ensure a reasonable coexistence between offshore installations and other uses of marine space while also protecting biodiversity. The EESC welcomes the proposals to include marine renewable energy development objectives when drawing up national and regional maritime spatial management plans, while also inviting the Commission to state explicitly that the estimated 3% of European maritime space required for scaling up the offshore renewables industry is an average figure, and that specific factors such as the nature of the wind and the various kinds of environment need to be taken into account.

6.2. The EESC agrees that the development and publication of management plans would signal to companies and investors the intentions of governments with regard to the future development of the offshore renewable energy sector, facilitating public and private sector planning.

6.3. The environmental impact of the installations is currently subject to a thorough and lengthy assessment during the process of obtaining all necessary administrative decisions. Therefore, the EESC supports the proposal to amend the TEN-E Regulation to include the one-stop-shop principle for offshore energy projects.

7. A new approach to offshore renewable energy and grid infrastructure

7.1. Most offshore wind farms currently in operation have been deployed as national projects connected directly to the shore via radial links. However, in order to speed up the development of offshore wind energy, reduce costs and reduce the marine area used, it is proposed to focus on hybrid projects. Such a system is an intermediate state between traditional projects connected radially to the national electricity system and the full meshed grid model. The strategy also presents the rather optimistic assumption that neighbouring Member States should jointly set far-reaching targets for offshore wind.

7.2. Given certain characteristics, such as depth and proximity to other countries, the EESC notes that the installation of hybrid projects is only possible in the North Sea and the Baltic Sea. Moreover, in view of the expected pace of development, the EESC believes that in the first instance, EU and national action should focus on unleashing the potential of the most advanced projects which are planned to be connected to the national electricity system in a radial form.

8. A clearer EU regulatory framework for offshore renewable energy

8.1. The EESC welcomes the statement that a well-regulated energy market should provide appropriate investment signals. In the Committee’s view, a predictable and stable regulatory environment plays a key role in the development of offshore wind energy.

8.2. The expected increase in the importance of cross-border energy projects means that clarification of the electricity market rules is needed, which was provided in the Staff Working Document accompanying this strategy.

8.3. The current legal framework does not provide for innovative technologies such as hybrid energy islands or offshore hydrogen production. The Commission suggests a separate marine market area with the possibility of reallocating part of the congestion revenues to producers as the best model for regulating hybrid projects. The EESC supports the objective of creating offshore bidding zones on the assumption that they will simplify the regulation of the energy market.

8.4. The EESC welcomes the efforts aimed at ensuring stability on the income side for investors. The Committee calls for flexibility in the possibility of promoting the development of offshore wind energy in Member States where this technology is at an early stage of development, including by granting direct support without the need for a competitive procedure, in accordance with the provisions of the RED Directive.
9. Mobilising private-sector investment in offshore renewables: the role of EU funds

9.1. The investment needs for implementing the strategy are estimated at almost EUR 800 billion, of which around two thirds would be to fund the associated grid infrastructure and one third for offshore generation. Investment in onshore and offshore renewable energy grids in Europe over the 10 years leading to 2020 were approximately EUR 30 billion. The strategy envisages an increase to more than EUR 60 billion in the coming decade and an even greater increase after 2030. Furthermore, the strategy expresses the expectation that most of these investments will come from private capital. However, the document shows that the Commission, the European Investment Bank and other financial institutions will work together to support strategic investments in offshore wind energy.

9.2. The EESC is concerned about the lack of details regarding specific measures and support instruments, which may put the further promotion of renewables at risk. Based on the current strategy, a range of eight different EU funds will be available to investors. The expected proportions in this area are not indicated, in particular the extent of the share of EU funds is not known. In the Committee’s view, creating a single instrument dedicated to the financing of offshore wind energy projects within existing programmes is essential in ensuring that the projects will be financed and developed quickly. Moreover, such an approach should be extended to other types of renewable energy sources.

9.3. The EESC points out that any investment in offshore wind farms should contribute as much as possible to the socioeconomic development of the regions in the immediate vicinity of the investment by promoting participation in the project — the ‘local content factor’.

9.4. The strategy foresees the possibility of a renewable energy financing mechanism which can offer ways of sharing the benefits of offshore energy projects with Member States that do not have a coastline. In the Committee’s view, the assumption that landlocked Member States would want to finance wind energy using their own resources in exchange for statistical benefits is too optimistic.

10. Focusing research and innovation on supporting offshore projects

10.1. The EESC is deeply disappointed by the perfunctory way in which the strategy addresses the issue of recycling used wind turbines. The strategy states that it is necessary to integrate the principle of ‘circularity by design’ into renewables research and innovation more systematically. However, it does not provide any details regarding potential implementation of this principle. The Committee notes that the processing of used wind blades on land is a growing problem in places such as Germany, where the possibility of burying them in the ground is being considered. It is worth noting that offshore windmills are much larger in size, which is directly reflected in the scale of the problem.

10.2. The EESC would like to highlight the fact that clean energy would improve not only air quality in the local environment, but the environment and climate as a whole. The EESC protests against the rapid development of offshore wind energy without taking into account its potential impact on the environment and recommends that the Commission pay due attention to the issue of decommissioning costs; in reality, in cases where projects are financed by EU funding, these costs should already be evaluated in advance and proper liability respected.

10.3. The EESC welcomes the fact that the new strategy is to be complemented by a plan for the development of skills and education systems in the field of offshore wind energy drawn up by DG EMPL and DG MARE. The expansion of skills is a fundamental element in the development of this sector. The sustainable and rapid development of this sector calls for training programmes to be implemented for Member States where this technology is still at an early stage of development. The strategy shows that existing EU instruments and funds can be used for this purpose. In the Committee’s view, the importance of developing skills in offshore wind energy requires dedicated instruments and funds to be created at EU level.

11. A stronger supply and value chain across Europe

11.1. Strengthening the supply chain requires a total investment of around EUR 0.5-1 billion. The EESC regrets the lack of a clear indication of how these funds would be mobilised or a time horizon.
11.2. The EESC welcomes the plan to strengthen the Clean Energy Industrial Forum and to create a dedicated group on marine renewable energy within it in 2021.

11.3. The Committee has serious concerns about the plans for the Commission and ENTSO-E to promote standardisation and interoperability between converters from different manufacturers by 2028. This date is too far away, especially given that 60 GW is to be built in offshore wind farms by 2030. The Committee would like to see a date that would allow a realistic time frame to develop standards for equipment.

Brussels, 27 April 2021.

The President of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Sustainable and Smart Mobility Strategy — putting European transport on track for the future’

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(2021/C 286/27)

Rapporteur: Stefan BACK
Co-rapporteur: Tanja BUZEK

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1. Conclusions and recommendations

1.1 The EESC welcomes the fact that the new transport strategy puts the focus on Sustainable and Smart Mobility, highlighting the vital role and benefits of transport for people and the EU economy, but also addressing the costs for society.

1.2 The strategy recognises the single market and social issues as key enablers for the transition to more sustainable and smart mobility, but is not fully living up to it. In fact, identified shortcomings in the accompanying Commission Staff Working Document (SWD) are not sufficiently addressed through actions or in dedicated chapters of the strategy.

1.3 The EESC supports the general approach of integrating the strategy into the European Green Deal and placing special emphasis on actions aimed at achieving the climate goals. However, it questions whether the balance between technical measures and transport policy measures is appropriate for achieving them. It particularly emphasises that many of the actions proposed with respect to sustainability and digitalisation have wide-ranging effects on the single market and transport workers. Insufficient attention to this can potentially impact successful implementation.

1.4 A successful EU mobility strategy must also go hand in hand with strengthening the competitiveness of the transport sector as a whole and the EU’s related industrial base.

1.5 The unprecedented COVID-19 pandemic has demonstrated the vital importance of a well-functioning transport single market and of sustainable supply chains, as well as of public transport for the mobility of essential workers. It also exposed the transport industry to a major survival challenge due to the dwindling volumes caused by the pandemic.

1.6 The pandemic has dramatically highlighted the situation of thousands of transport workers stranded across Europe and worldwide while faced with precarious work contracts. It also puts the spotlight on a social crisis in transport since transport policies over the past decades with a focus on the single market have failed to prevent worsening working conditions in all transport modes. Here, the EESC sees an urgent need for applying the same level of ambition to a socially sustainable transport system. In addition, a near future crisis contingency plan must seek to prevent negative effects for transport workers.
1.7 The EESC welcomes the fact that the strategy highlights women in transport, but again regrets that there is no action point to match the ambition.

1.8 The EESC agrees with the priorities set regarding the need to complete the Single European Transport Area (SETA) and reinforce the single market, also in view of the COVID-19 experience, as well as the need to prepare a crisis contingency plan. However, it insists that setting up such a crisis contingency plan must be based on a serious organised civil society and social dialogue and be in agreement with the social partners.

1.9 The EESC considers that limiting the milestones for resilient mobility to the timely implementation of TEN-T and the reduction of the number of deaths due to transport is extremely inadequate, given the wide coverage of topics in this section of the strategy.

1.10 The EESC supports making all transport modes more sustainable and promoting a sustainable multimodal transport system, based on cooperation between the modes and on optimised environmental characteristics and the social sustainability of each mode. It considers that vehicle emissions should be measured over the vehicle’s lifecycle and through a well-to-wheel method.

1.11 Milestone 1 of having at least 30 million zero-emission cars and 80,000 zero-emission lorries in operation by 2030 appears over-optimistic and is not sufficiently analysed, given that there is no clear view on the number of charging points needed for the fleet envisaged. The EESC warns against setting over-ambitious objectives that could have negative effects on the credibility of the strategy.

1.12 The EESC questions whether the new strategy is consistent with an approach that sees the different modes as a combined resource in which, within a multimodal transport system, cooperation between modes based on solutions with the best environmental — and social — footprint and the highest efficiency is promoted.

1.13 Social dumping and unfair practices in one sector create distortions in other sectors. Precarious working conditions and the lack of enforcement of social legislation distort pricing signals and choices for a transport service. The EESC sees the need for an initiative to include labour costs as part of a fair pricing policy for sustainable transport services, in addition to the internalisation of all external costs. Fair free market pricing for a transport service must include a living wage, the same pay for the same work at the same place, health care and social security coverage. For public transport pricing, compensation for the service obligation exists.

1.14 According to the strategy, maritime and rail transport should be able to compete on equal terms with road transport in 2030, but it fails to explain how this is to be achieved. In fact, a more comprehensive strategy to boost rail freight and short sea shipping is missing.

1.15 State aid is relevant to pursuing policy goals such as making transport green and social. The EESC sees an urgent need to review the State Aid Guidelines, in particular the Maritime State Aid Guidelines, in order to ensure fair social and economic conditions in the port sector and the employment of European seafarers.

1.16 Moreover, the strategy is missing an in-depth analysis of the crucial link between the single market and competition policy and the EESC shares concerns regarding the prolongation of the Consortia Block Exemption Regulation (CBER).

1.17 The strategy also is not sufficiently reflecting the concerns of rural areas. The EESC calls for the upcoming Communication on the long-term vision for rural areas to address the crucial mobility element and ensure affordable alternatives that are fit for purpose and available to all.

1.18 To avoid transport poverty, access to affordable quality public transport is essential as a sustainable alternative to individual transport modes and is of particular importance for rural areas. In achieving sustainable urban mobility, more emphasis should be given to public transport as the backbone of that transition and an important source of social inclusion and local quality employment.
1.19 The EESC considers that city traffic is suitable for Cooperated, connected and automated mobility (CCAM) pilots that should be based on a safety impact assessment as well as a civil society and social dialogue. It underscores the need of adequate financing to enable competence building where needed.

1.20 With regard to urban mobility, Mobility as a Service (MaaS) platforms should be under public accountability to ensure the implementation of urban mobility strategies (SUMPs). Only socially responsible mobility service providers with fair and decent working conditions should have access to MaaS platforms, also taking into account the planned legislation on platform workers.

1.21 The EESC welcomes the digitalisation and automation objectives set out in the strategy as a means to achieve sustainability goals and calls for a broad dialogue on the wider societal and environmental impacts. It stresses the need for a human-centred approach, including social and environmental aspects.

1.22 The EESC notes with concern that the entire Smart Mobility chapter fails to address transport workers. The human factor in the research, design and deployment of digital and automation technologies is essential for the successful use of such innovations and must be based on an inclusive social dialogue to ensure a just transition.

1.23 Digital transition is happening now. The EESC regrets that recommendations on its impact on the transport workforce will not be issued until 2023. It calls for immediate action to be taken, in concert with the social partners and drawing on existing best practices.

1.24 Successful investments in digital technologies need a participatory social dialogue from the start that includes a discussion on the purpose of digitalisation and automation (e.g. efficiency increase versus overcapacity), the objective of corresponding measures for safer and healthier workplaces and saving employment, and a fair share of productivity gains for workers.

1.25 The EESC welcomes the stronger recognition of transport workers but it takes concrete legislative initiatives to eradicate social dumping in all transport modes. It sees an urgent need to establish a social taskforce for transport, including all relevant Directorates-General (DGs) such as MOVE, EMPL and other relevant DGs.

1.26 The EESC supports the ‘close to zero fatality’ aim for all transport modes by 2050, but the strategy fails to address professional road transport and in particular the problem of drivers’ fatigue as a ‘chronic disease’ and an important factor for accidents. In the context of bus and coach drivers, it draws attention to the report to be presented by the European Commission (EC) to the Council and Parliament, and expects the EU institutions to act in line with the political objectives set by the driving and rest time regulation.

1.27 The EESC underlines the importance of obtaining broad support for a green, social and digital transition from all stakeholders in civil society, including the social partners, and stands ready to contribute to a dialogue with civil society in order to shape and implement the strategy. The strategy rightly states that a shift towards sustainable, smart and resilient mobility must be just or else not take place.

2. Background

2.1 The Sustainable and Smart Mobility Strategy — putting European transport on track for the future highlights the vital role and benefits of transport for people and the EU economy, but also addresses the costs for society. In the Communication, the EC proposes a new strategy to achieve the objectives of reducing greenhouse gas emissions by transport by 55% in 2030 and 90% by 2050, agreed in the European Green Deal. It also sets out a roadmap to digitalise and develop automation and Artificial Intelligence (AI) in the transport sector.
2.2 In the light of the COVID-19 experience, the strategy makes resilience against future crises a key objective of the EU transport policy, together with the completion of the SETA, in accordance with the 2011 transport policy white paper.

2.3 The strategy, rolling out 10 key areas (flagships) and 14 concrete milestones, also states that affordable mobility must be available to all and that the sector must offer good social conditions, reskilling opportunities and attractive jobs. The European Pillar of Social Rights must ensure that the green and digital transition is fair.

2.4 An Action Plan accompanying the Communication sets out 82 actions to be taken between 2021 and 2023. Further analysis is presented in an accompanying SWD.

3. General comments: The vision of the strategy

3.1 A decade after the last transport policy white paper in 2011, the new overarching EC strategy aims to achieve the fundamental objectives of sustainable, smart and resilient mobility. Previous white papers (1992, 2001 and 2011) all focused on the establishment of the SETA and the completion of the single market.

3.2 Already in 2001 and 2011, the white papers addressed the problem of the EU’s dependency on fossil fuels and the problem of climate change, and the growing contribution of the EU transport sector to greenhouse gas emissions, but failed to achieve their climate-relevant goals. Due to the climate crisis, the EESC warmly welcomes the approach of integrating the new EU Mobility Strategy into the European Green Deal with a special emphasis on actions aimed at achieving the climate goals.

3.3 To ensure that the related European industrial value chains will be the backbone of a sustainable and digital transformation of EU transport, a successful mobility strategy must go hand in hand with strengthening the EU’s industrial base. It needs to build strongly on strengthening the competitiveness of the transport sector as a whole.

3.4 The unprecedented COVID-19 pandemic has demonstrated the vital importance of a well-functioning transport single market and of sustainable supply chains while exposing the transport industry to a major survival challenge due to the dwindling volumes caused by the pandemic. It has dramatically highlighted the situation of thousands of transport workers stranded across Europe and worldwide while faced with precarious working contracts, insufficient social security and health coverage, and job loss without social protection. It puts the spotlight on a social crisis in transport that reveals omissions in past EU transport policies and demonstrates the need to apply the same level of ambition to a socially sustainable transport system. The EESC considers it imperative not to miss the opportunity to shape a truly sustainable SETA for the future that now needs fundamental correction when moving forward. In addition, a future crisis contingency plan must seek to prevent negative effects for transport workers.

3.5 In spite of the initiatives undertaken so far, the SETA, including the single market, social and environmental dimensions, has not been achieved and urgently requires further action. The EESC regrets that the strategy, though very detailed on climate and digitalisation objectives and the means to achieve them, is less exhaustive with respect to single market and social issues. This is particularly unfortunate, since many of the actions proposed with respect to sustainability and digitalisation have wide-ranging effects on the single market and transport workers, something that is therefore cross-referenced throughout this entire opinion. In this respect, the EESC calls for a more holistic and transversal approach to avoid the strategy having a Pyrrhic victory in the end.

3.6 The EESC welcomes the fact that the strategy highlights women in transport and will ‘duly apply equality mainstreaming in its transport related policy initiatives’, but regrets that there is no action point to match the ambition. ‘Good practice exchange’ and a network of Diversity Ambassadors is not enough to mainstream a gender-responsive approach in EU transport policies. Good examples of action points are part of the SUMP topic guide ‘Addressing Gender Equity and Vulnerable Groups in SUMPs’.
3.7 A majority of the planned actions under strategy sections 1 to 3 (vision, sustainable mobility and smart mobility) have a narrow scope focusing on mainly technical issues relating to the environmental characteristics of vehicles, ships and aircrafts, deployment of infrastructure for alternative fuels, industrial and digital development projects, energy taxation and the internalisation of external costs with the objective of implementing the polluter/user pays principle. Flagships 3 and 4 deal with legislative and non-legislative policy measures to promote sustainable passenger and freight transport.

3.8 Whereas both proposed actions and milestones appear reciprocally fairly consistent with respect to the mainly technical issues being dealt with in sections 1 to 3, the EESC questions whether the balance between technical measures and transport policy measures is adequate for achieving the climate goals.

3.9 The EESC also questions the approach, where an almost 300-page SWD is necessary in order to fully understand the objectives of the strategy. This way of presenting and explaining a strategy does not help to make it accessible and easy to gain broad support.

3.10 The strategy rightly states that 'the sector’s most valuable asset by far is its people and the sustainable and smart transition will not be possible without the support and buy-in of transport workers'.

3.11 The EESC draws attention to the particular concerns of rural areas in Europe that the set sustainable mobility targets may only be achievable with significant compromise to lifestyle. It proactively calls for the Commission to address the crucial mobility element in its upcoming Communication on the long-term vision for rural areas and ensure affordable alternatives that are fit for purpose and available to all.

3.12 The EESC underlines the importance of obtaining broad support for the envisaged green and digital transition from all stakeholders in civil society, including the social partners. This also means that the social dimension, including dialogue on how to best manage the transition and make it socially acceptable, is of vital importance.

3.13 The EESC stands ready to contribute to a dialogue with civil society in order to shape and implement the strategy and this opinion aims to contribute concrete proposals to the debate.

4. Sustainable mobility

4.1 The EESC agrees that in order to achieve this systemic change, it takes three pillars of actions, namely: ‘(1) make all transport modes more sustainable, (2) make sustainable alternatives widely available in a multimodal transport system and (3) put in place the right incentives to drive the transition’.

4.2 To make all transport modes more sustainable, milestone 1 aims at the 2030 objective of having 30 million zero-emission cars and 80,000 zero-emission lorries in operation, from today’s figures of about one million cars and 30,000 lorries (1). The EESC takes note that investment decisions regarding the vehicles in use by 2030 will be taken now or very soon. Given their price difference, the still fairly sparse loading/refuelling infrastructure for alternative fuels and the lifetime of vehicles, the scenario seems over-optimistic. On top of that, there appears as yet to be no clear idea of the number of loading/refuelling points required to support the fleets envisaged. It warns against setting over-ambitious objectives that could have negative effects on the credibility of the strategy.

4.3 The strategy clearly outlines electricity and hydrogen as priority option to decarbonise mobility. An accurate zero-emission approach to mobility should consider the carbon footprint of vehicles across their entire lifecycle (i.e. only 33 % of electricity within the EU came from renewable energy in 2018) and be measured through a well-to-wheel method.

The EESC strongly supports the shift to more sustainable transport solutions and encourages the EC to develop this approach with concrete action points that support also non-motorised transport.

The Green Deal prioritises resource efficiency by moving to a clean and circular economy, restoring biodiversity, stopping degradation of public spaces and cutting pollution. Considering this, the EESC reiterates that a sustainable transport strategy must give priority to land use saving infrastructure, ensure a fair share of space in cities and agglomerations and be resource-efficient, particularly regarding critical resources. Fundamental rights have to be respected.

The EESC welcomes that the EC will further engage with cities and Member States to ensure that all large and medium-sized cities put in place their own SUMPs by 2030. The current state-of-play suggests that the desired increase in number of developed SUMPs will not happen without the national frameworks and financial instruments for the development and implementation of SUMPs.

The strategy only briefly refers to parking management and policies. The EESC suggests further developing this with clear action points, taking into account the negative impact of parking areas on soil sealing in cities. Good parking management can help to free valuable public space, making cities more attractive, support local economy, reduce vehicle traffic and improve congestion, road safety and air pollution.

The second pillar of sustainable transport addresses the availability of alternative transport modes and offers a modal choice to this end within a multimodal approach. Milestones 4 to 8 set out 2030 and 2050 objectives for a massive increase in rail passenger transport (doubling high speed rail by 2030 and tripling it by 2050) and rail freight transport (increase of 50% by 2030 and doubling it by 2050). Targets for collective travel, inland waterways and short sea shipping are also set, as well as for 100 climate neutral cities by 2030.

The EESC questions whether the strategy is consistent with an approach that sees the different modes as a combined resource in which, within a multimodal transport system, cooperation between modes based on solutions with the best environmental — and social — footprint and the highest efficiency is promoted instead of competition between the modes.

In this context, the EESC calls for a broader sustainability assessment in order to fully incorporate social sustainability. It suggests complementing the environmental footprint in the strategy by introducing a comparable ‘European labour footprint for transport’ of fair working conditions, including all elements relevant to preventing continuing deterioration, to ensure fair competition within and between transport modes and to avoid destructive competition by creating the wrong incentives. To ensure a level playing field between transport modes, fair free market pricing must include fair labour costs, as stressed in chapter 6.

It is regrettable that the development of multimodal goods transport models, based on cooperation between the modes, on optimised environmental characteristics and on the social sustainability of each mode, optimising resources through digital platforms while respecting all social legislation, is not one of the milestones under the smart mobility pillar of the strategy.

Milestone 9 anticipates that maritime and rail transport should be able to compete on equal terms with road transport in 2030 without explaining how this is to be achieved, except possibly through internalisation of external costs and fuel taxation. In fact, a more comprehensive strategy to boost rail freight and short sea shipping, that takes into account among other things the higher rail cost and punctuality problems of rail described in the accompanying SWD, is missing.
4.13 The objective of milestone 4 is that all scheduled travel up to 500 km inside the EU should be carbon-neutral by 2030. The impact on passenger transport by bus and the possible negative effects on sustainability need to be discussed.

4.14 State aid is relevant to pursuing policy goals such as making transport green and social. The EESC sees an urgent need to review the State Aid Guidelines. One element is the territorial aspect, for example regarding remote areas. Furthermore, it draws attention to the fact that a request for the Maritime State Aid Guidelines to be adapted in order to ensure fair social and economic conditions in the port sector and the employment of European seafarers has long been pending to make the maritime sector socially sustainable, as has a call for faster action than 2023.

4.15 The EESC criticises the fact that the strategy lacks an in-depth analysis of the crucial link between the single market and competition policy. It agrees that a proper discussion on State aid and subsidies to the maritime transport and their effect on the port sector is necessary. The European social partners jointly expressed their ‘concerns regarding the prolongation of the CBER, which will worsen the inequality of treatment between shipowners and port stakeholders and will have detrimental effects on EU ports’ (2).

5. Smart mobility

5.1 The EESC agrees that with innovation shaping ‘the mobility of passengers and freight of the future, the right framework and enablers should be in place to facilitate this transition that can make the transport system much more efficient and sustainable’. It sees it as imperative to follow one core guiding principle: digitalisation and automation are instruments rather than a goal in themselves.

5.2 In this context, the EESC welcomes the digitalisation and automation objectives set out in the strategy as a means to achieve sustainability goals. Addressing the societal and environmental impact of AI, the principle of human control over the machine, as well as personal data collection and the use of such data, is of utmost importance and requires broad dialogue. Including the human factor in research, design and deployment of digital and automation technologies is essential for the successful use of such innovations and must be based on an inclusive social dialogue to ensure a just transition. A human-centred approach is needed, taking into account social and environmental aspects, as well as a guarantee that there will be no abusive use of technologies.

5.3 The EESC notes the lack of any reference to the horizontal initiatives regarding safety, liability, fundamental rights and data aspects of AI and the Data Act package regarding control and conditions for data sharing.

5.4 For the EU to become a world leader in development of CCAM services and systems, it should be easier to test the pilot services in the city traffic systems, based on a safety impact assessment as well as a civil society and social dialogue. The current pilots are tested mostly in closed transport systems (campuses, industry complexes, etc.).

5.5 The EESC welcomes the fact that the strategy addresses digital transformation in urban mobility, including MaaS, shared services, on-demand services and the emergence of intermediary platforms and the opportunities and risks for sustainable and efficient transport concepts that this offers. It also welcomes the fact that paragraph 38 rightly addresses social and safety concerns, since a number of new mobility services as well as intermediary platforms offer precarious employment forms and low wage levels which may pose problems of competition. However, Action 23 does not intend to ‘assess the need for measures to ensure a level playing field for local, on-demand passenger transport and ride-hailing platforms’ until 2022.

(2) This call has been expressed by the European social partners to Commissioners Valean and Schmit.
5.6 MaaS platforms should be under public accountability to ensure the implementation of SUMPs. Only socially responsible mobility service providers with fair and decent working conditions should have access to MaaS platforms, also taking into account the planned legislation on platform workers.

5.7 The EESC welcomes the EC initiative on legislation to address the working conditions of platform workers and expects the proposal to ensure the presumption of an employment status and fair working conditions for platform workers in transport, such as in ride-hailing or delivery services.

5.8 The EESC is very attentive to the concern that the cost of smart mobility solutions, AI development and automation could potentially deepen divides, as the baseline from which to start varies in the EU from Member State to Member State. Hence the EESC sees it as essential for any successful strategy for the EU to address these investment gaps by supporting smart mobility solutions in poorer Member States, equally by enforcing social dialogue, social conditions and a human-centred approach.

6. Resilient mobility

6.1 Section 4 on Resilient mobility comes with three flagships — reinforcing the single market, making mobility fair and just for all and enhancing transport safety and security, accompanied by milestones 13 and 14.

Single market relevance

6.2 The EESC agrees with the priorities set regarding the need to complete the SETA and reinforce the single market, including in view of the COVID-19 experience as well as the need to prepare a crisis contingency plan. However, the EESC is of the opinion that the setting up of such a crisis contingency plan must be based on a serious organised civil society and social dialogue and be in agreement with the social partners.

6.3 The EESC regrets, however, that for instance completion of the SETA and reinforcing the single market, the importance of timely implementation of TEN-T and the development of strategic value chains regarding, for instance, batteries and hydrogen and related financing needs to achieve the objectives of the Green Deal and digital transition in transport are bundled together with other important issues such as passenger rights, public service obligations (PSO), social conditions of transport workers and transport safety and security. It creates a strange impression that the overarching issues of the single market and the related social and safety questions come last in the strategy.

6.4 The EESC considers that limiting the milestones under this section to the timely implementation of TEN-T and the reduction of the number of deaths due to transport is extremely inadequate, since it deals with the reinforcement of the single market and completion of the SETA, including improved efficiency by enabling optimal capacity utilisation, financing of the modernisation of fleets, State aid issues, improved connectivity, and protection of passengers and their rights.

6.5 The EESC takes note of the fact that, according to the strategy's vision, a well-functioning and crisis-resilient single market 'must also be a key objective of the EU transport policy' while 'greening mobility is the new license for the transport sector to grow'. For instance, completion of the transport single market with new sustainable and digitalised business models could well have been added to the milestones.

6.6 It is also regrettable that the strategy does not describe the remaining obstacles to full implementation of the single market in the field of transport. In particular SWD section 4.3.3 brings up a number of issues with the functioning of the single market that are not addressed in section 4. This is similar to section 4.3.4, where a number of social shortcomings are described that are not addressed in the strategy.

6.7 The Better Regulation processes need to be improved. The EESC insists that for each of the actions, whether mentioned in the action plan or in other documents, a fully-fledged impact assessment (social, environmental, economic, with gender mainstreaming) has to be carried out with a privileged consultation of the recognised social partners as by the EC proved representative organisations.
6.8 Likewise, a number of the actions planned in the preceding sections of the strategy have clear single market implications, for instance amendments to the directive on the weights and dimensions of goods vehicles, amendments to aviation legislation and regarding digital platforms.

Social dimension and working conditions

6.9 The unprecedented COVID-19 crisis has shown that transport is an essential service. It has also highlighted the importance of transport workers as key workers and their importance for the resilience of the transport system. The EESC welcomes the stronger recognition of transport workers in the strategy in comparison with previous transport policy papers, acknowledging them as ‘the sector’s most valuable asset’, while some suffer harsh and precarious working conditions. However, given the importance attached to the Social Pillar in current EU policy implementation, it is surprising that the social dimension in transport is not addressed in a dedicated section.

6.10 The strategy further recognises the sector’s demographic problems and the difficulties in attracting the workers it needs. It concludes that ‘providing higher social standards would contribute directly to reverse the current general lack of attractiveness of the sector’. Regrettably, neither the strategy nor the SWD adequately analyse the causes of the transport sector’s difficulties in attracting workers. They do not take into account the fact that transport policies over the past decades with a focus on the single market have failed to prevent worsening working conditions in all transport modes.

6.11 EC statements that it will ‘consider measures across different modes to strengthen the legislative framework on conditions of workers’ and ‘launch initiatives to increase the attractiveness of the sector in 2021-2023’ are too vague. It is indeed difficult to understand why elements such as fair working conditions and improving the attractiveness of the profession, including to young people and women, have not been considered worthy of milestones.

6.12 Concrete legislative initiatives are needed to eradicate social dumping in all transport modes. The principle of equal pay for equal work at the same place must apply for all transport modes (posting of highly mobile workers) or the protection of employment and acquired rights for staff subject to a change of operators due to tendering of contracts for the different transport modes. Hence the EESC sees an urgent need to establish a social taskforce for transport, including all relevant DGs such as MOVE, EMPL and Competition.

Social costs and sustainability

6.13 Social dumping and unfair practices in one sector create distortions in other sectors. Precarious working conditions and the lack of enforcement of social legislation distort pricing signals and choices for a transport mode. The EESC sees the need for an initiative to include labour costs as part of a fair pricing policy for sustainable transport services, in addition to the internalisation of all external costs. Fair free market pricing for a transport service must include a living wage, the same pay for the same work at the same place, health care and social security coverage, and investments in a healthy workplace and in qualifications and training. Adding a ‘labour footprint’ to the recommendations regarding the carbon footprint in actions 28 and 34, as defined in 4.6, could be one, but far from sufficient, action. For public transport pricing, compensation for the service obligation exists.

6.14 The EESC underlines the importance of collective bargaining and its role in setting the wage level and therefore insists on the importance of strengthening collective bargaining, in particular in the highly fragmented transport sector and in all Member States.

Just digital transition

6.15 The EESC welcomes the fact that the strategy properly addresses the risks and opportunities of the digital transformation for employment and the need for a just transition for transport workers. However, Action 69 does not provide for ‘recommendations on the transition to automation and digitalisation and their impact on the transport workforce’ to be issued until 2023. This does not consider the fact that digitalisation and automation are already ongoing and urgent action is needed. Milestone 13, for example, sets the goal of ‘automated mobility deployment at large scale [by 2030]’.
6.16 Successful investments in digital technologies need participatory social dialogue from the start. Good practice examples exist, such as the Collective Bargaining Agreement CBA Future — Shaping automation socially and in a co-determined way of the container terminal operator EUROGATE in Germany, including its three terminals in Hamburg, Bremerhaven and Wilhelmshaven (3). This dialogue must also include a discussion on the purpose of digitalisation and automation (e.g. efficiency increase versus overcapacity), the objective of corresponding measures for safer and healthier workplaces, saving employment and a fair share of productivity gains for workers.

6.17 At European level, the European social partners in urban public transport recently signed Joint Recommendations on the digital transformation in urban public transport (4). They promote an inclusive and participatory approach to the digital transformation, ensuring job security and skills within digital transformation, using digital transformation to improve working conditions and work-life-balance, and on ensuring data protection, privacy, and dignity. Strategies should ensure that both the enterprise and workers benefit from the introduction of digital technologies, including through a share of productivity gains.

6.18 The EC should, in concert with the social partners, take immediate action to ensure a just transition to automation and digitalisation ‘that leaves no one behind’.

Transport safety and security

6.19 On the subject of transport safety, milestone 14 aims to a close to zero fatality rate for all transport modes by 2050, the main concern being fatalities in road transport. The 2018 EU road safety strategy, however, does not include professional road transport and in particular the problem of drivers’ fatigue as a ‘chronic disease’ and an important factor for accidents.

6.20 In this context, the EESC expresses its serious concerns about the new EC initiative on the driving and rest time rules for bus and coach drivers and draws attention to the report to be presented by the EC to Council and Parliament. Any extension of the working and driving hours in the sector would go against the policy objectives of Regulation (EC) No 561/2006 (5) and lead to a further deterioration in road safety for passengers and other road users, and in the working conditions for bus and coach drivers.

6.21 The EESC supports the measure planned to improve security, and in particular the fact that measures are envisaged to deal with cyber threats.

7. Importance of strong public service

7.1 The EESC reiterates that it is a public policy task to ensure a sustainable urban transport system that enforces the climate goals but also public health, road safety and security as well as a fair share of urban space.

7.2 The EC vision rightly highlights that it is ‘crucial that mobility is available and affordable for all, that rural and remote regions remain connected’. The EESC insists on the availability of public services, as supported by the legal framework, as the backbone of sustainable and affordable mobility. This calls for more and environmentally and socially better PSO compensation by means of financial support and introducing financial instruments on the part of national governments, regions and municipality.

(3) The CBA concluded in 2019 between EUROGATE and the German Services Trade Union (ver.di) covers all German subsidiaries of the Group, including the container terminals, the maintenance and rail company and other business units in Germany. An established automation commission is informed about any hard- or software projects in the company even if there is no direct impact on jobs. The exclusion of related employment restructuring until 2025 is part of the CBA with EUROGATE.


7.3 To avoid transport poverty, access to affordable quality public transport is essential as a sustainable alternative to individual transport modes. This is of particular importance for rural areas, and shared and on-demand services can also complete the public transport offer in particular in these areas under the condition of providing fair quality working conditions. Furthermore, non-motorised active transport, walking and cycling need more attention and investment in safe quality infrastructure.

7.4 Public transport is important for social inclusion and local quality employment. The strategy puts too much emphasis on the technological aspects of digitalisation, micromobility and new mobility services. The new vision must not lose sight of the fact that smart mobility should be an instrument rather than a goal.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions:

**Point 4.14 (linked to deletion of point 1.15)**
Delete this point:

State aid is relevant to pursuing policy goals such as making transport green and social. The EESC sees an urgent need to review the State Aid Guidelines. One element is the territorial aspect, for example regarding remote areas. Furthermore, it draws attention to the fact that a request for the Maritime State Aid Guidelines to be adapted in order to ensure fair social and economic conditions in the port sector and the employment of European seafarers has long been pending to make the maritime sector socially sustainable, as has a call for faster action than 2023.

Outcome of the vote on the amendment:
Votes in favour: 77
Votes against: 123
Abstentions: 27

**Point 1.15 (linked to deletion of point 4.14)**
Delete this point:

State aid is relevant to pursuing policy goals such as making transport green and social. The EESC sees an urgent need to review the State Aid Guidelines, in particular the Maritime State Aid Guidelines, in order to ensure fair social and economic conditions in the port sector and the employment of European seafarers.

Outcome of the vote on the amendment:
Amendment rejected in virtue of the vote on point 4.14 to which it was linked.
(2021/C 286/28)

Rapporteur: Maurizio MENSİ

Referral  
Council, 26.1.2021 — 19.2.2021

Legal basis  
Article 114 of the Treaty on the Functioning of the European Union

Section responsible  
Transport, Energy, Infrastructure and the Information Society

Adopted in section  
14.4.2021

Adopted at plenary  
27.4.2021

Plenary session No  
560

Outcome of vote  
for/against/abstentions)  
243/0/5

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission's efforts to make public and private entities more resilient to threats from cyber and physical attacks and incidents. The Committee also agrees that there is a need to strengthen industry and innovation capacity in an inclusive manner, through a strategy based on four pillars: data protection, fundamental rights, security and cybersecurity.

1.2. The EESC notes, however, that, given the relevance and sensitivity of the objectives pursued by the two proposals, a regulation would have been preferable to a directive. Moreover, it is not clear why the Commission did not even consider this option.

1.3. The EESC notes that some of the provisions in the two proposals overlap as they are closely linked and complementary: one proposal focuses primarily on aspects of cybersecurity and the other on physical security. The Committee therefore calls for the possibility of combining the two proposals to form a single text to be considered in the interests of simplification and streamlining.

1.4. The EESC welcomes the proposed removal of the distinction between operators of essential services and digital services providers found in the original NIS Directive. However, with regard to the directive's scope of application, the Committee points out that specific, clearer guidelines are needed to identify those bound by it. In particular, the criteria for distinguishing between 'essential' and 'important' and the respective requirements to be met should be more precisely defined, so as to ensure that differing approaches at national level do not result in barriers to trade or free movement of goods and services, which could jeopardise businesses and undermine trade.

1.5. Given the complexity of the system outlined in the two proposals, the EESC considers it important that the Commission clarify the exact scope of the two sets of rules, especially where different competing provisions aim to regulate the same matters or subjects.
1.6. The EESC points out that ensuring the clarity of all regulatory provisions is a non-negotiable aim, along with reducing red tape and fragmentation by simplifying procedures, security requirements and incident reporting obligations. Moreover, to this end and for the benefit of members of the public and businesses, it may be worthwhile merging the two proposals to form one single text, thus avoiding a sometimes complicated interpretation and implementation process.

1.7. The EESC recognises the key role, as highlighted in the proposal, of the management bodies of ‘essential’ and ‘important’ entities, whose members are required to follow specific training courses on a regular basis to gain sufficient knowledge and skills to apprehend and manage the various cyber risks and assess their impact. In this regard, the EESC considers that the proposal should specify the minimum content of the knowledge and skills in question, so as to provide guidance at European level on which training competencies are considered sufficient and to prevent the content of the various training courses differing between countries.

1.8. The EESC agrees that ENISA plays a key role in the overall European institutional and operational cybersecurity system. It considers, in this regard, that, in addition to the two-yearly report on the state of cybersecurity in the Union, this body should publish regular, up-to-date information on cybersecurity incidents and sector-specific warnings online. This would be another useful way of providing information to enable operators affected by NIS 2 to better protect their businesses.

1.9. The EESC agrees with the proposal to entrust ENISA with the task of setting up a European Vulnerability Register. It considers that communication of vulnerabilities and the most significant incidents must be made compulsory instead of voluntary, thus ensuring that it is also a useful tool for contracting authorities involved in the various European-level procurement procedures, including those for 5G technologies and products.

2. General comments

2.1. On 16 December 2020, the new EU cybersecurity strategy was presented alongside two legislative proposals: the revision of Directive (EU) 2016/1148 (1) on the security of network and information systems (the ‘NIS 2 Directive’) and a new directive on the resilience of critical entities (CER). The strategy, which is a cornerstone of the communication on Shaping Europe’s Digital Future (2), the recovery plan for Europe and the EU Security Union Strategy, aims to enhance Europe’s collective resilience to cyber threats and to guarantee that all individuals and businesses are able to benefit from trustworthy and secure digital services and tools.

2.2. Existing EU measures to protect critical services and infrastructure from cyber and physical risks need to be updated. Cybersecurity-related risks are continuing to evolve as digitalisation and interconnectedness increase. The existing regulatory framework must therefore be revised in line with the EU security strategy, moving beyond the dichotomy between online and offline and an approach based on strict compartmentalisation.

2.3. The two proposals for directives cover a wide range of sectors and address current and future online and offline risks linked to cyber and criminal attacks, natural disasters and other incidents. They also draw on the lessons learned during the current pandemic, which has shown that the increasing dependence of society and the economy on digital solutions leaves them vulnerable and exposed to growing and rapidly changing cyber threats, especially with regard to groups at risk of social exclusion such as people with disabilities. This has led the EU to propose measures to ensure that cyberspace remains a global and open space, based on sound security guarantees, digital sovereignty and leadership. It aims to develop the operational capacity to prevent, deter and respond to potential threats through greater cooperation, with due respect for each Member State’s prerogatives in the area of national security.

3. The proposal to revise the Directive on the security of network and information systems

3.1. The NIS Directive (Directive (EU) 2016/1148) was the EU’s first cross-cutting regulatory tool in the area of cybersecurity. It aimed to make the EU’s network and information systems more resilient to cyber risks. Despite achieving good results, the NIS Directive nevertheless has some limitations. The digital transformation of society, which has picked up the pace due to the COVID-19 crisis, has expanded the threat landscape, highlighting our increasingly interdependent

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(2) COM(2020) 67 final.
societies' vulnerability to significant, unexpected risks. New challenges have emerged, which call for appropriate and innovative responses. The findings of the broad stakeholder consultation have brought to light the insufficient level of cybersecurity in European businesses, the inconsistent application of the rules in various sectors at national level and the lack of understanding of the main threats and challenges.

3.2. The NIS 2 proposal is closely linked to two other initiatives: the proposed Digital Operational Resilience Act (DORA), applicable to the digital finance sector, and the proposal for a directive on the resilience of critical entities (CER), which extends the scope of application of Directive 2008/114/EC (*) on energy and transport to other sectors, focusing for example on the health sector and on bodies active in research and development of medicines. The CER Directive, which has the same sectoral scope as the NIS 2 Directive with regard to essential entities (Annex I of the NIS 2 Directive), shifts its focus from the protection of physical assets to the resilience of the entities managing them. It also moves from identifying European critical infrastructure with a cross-border dimension to identifying critical infrastructure at national level. The NIS 2 proposal is also in line with and complements other existing regulatory texts such as the European Electronic Communications Code, the General Data Protection Regulation (GDPR) and the eIDAS Regulation on electronic identification and trust services.

3.3. In keeping with the Regulatory Fitness and Performance Programme (REFIT), the NIS 2 proposal aims to reduce red tape for the competent authorities and compliance costs for public and private stakeholders, and to modernise the regulatory framework. In addition, it enhances security requirements on companies, addresses the issue of supply chain security, streamlines reporting obligations, introduces more stringent supervision measures for national authorities and seeks to harmonise penalties in the Member States.

3.4. The NIS also helps to boost the exchange of information and cooperation on cyber crisis management at European and national level. The proposal no longer distinguishes between operators of essential services and digital services providers as did the NIS Directive. Its scope of application covers medium or large companies in sectors identified as critical to the economy and to society. These public or private entities are divided into two categories: ‘essential’ and ‘important’, each subject to different supervisory measures. However, Member States do have the option of considering smaller entities that have a high risk profile.

3.5. A new network of EU security operations centres, powered by artificial intelligence (AI), is planned. They will act as a real ‘cybersecurity shield’, able to detect signs of a cyber attack early enough to allow for proactive action, before damage occurs. The significance of AI for cybersecurity is also highlighted in the US National Security Commission on Artificial Intelligence (NSCAI) report published on 1 March 2021. As a result, Member States and critical infrastructure operators will have direct access to threat information in the form of ‘Threat Intelligence’, as part of a European security network.

3.6. The Commission also addresses the problems of supply chain security and security in relationships with suppliers: the Member States, in cooperation with the European Commission and ENISA, can carry out coordinated risk assessments of critical supply chains, based on the successful approach taken for 5G networks, which was set out in the recommendation of 26 March 2019 (*).

3.7. The proposal tightens and harmonises rules on security and reporting obligations for companies and establishes a common approach to risk management, which includes a minimum list of basic security measures to be applied. More specific provisions are included on the incident reporting process, on the content of reports and on deadlines. The proposal outlines a two-stage process: companies have 24 hours to submit an initial summary report, to be followed by a final detailed report within one month.

3.8. Member States are required to appoint national authorities responsible for managing crises, supported by specific plans and a new operational cooperation network: the EU-Cyber Crises Liaison Organisation Network (EU-CyCLONe). The Cooperation Group will have an enhanced role in shaping strategic decisions and a register of vulnerabilities found in the EU will be established and managed by ENISA; information sharing and cooperation between Member States’ authorities will be stepped up, including cooperation on cyber crisis management.

3.9. The proposal introduces more stringent supervisory measures for national authorities and stricter enforcement requirements. It also aims to harmonise penalties across all Member States.

3.10. In this connection, the proposal for a directive sets out a number of administrative sanctions for breaches of cybersecurity and reporting obligations. It lays down provisions on the liability of natural persons who hold representational or managerial positions in companies that are covered by the directive. In this sense, the proposal improves the way in which the EU prevents, manages and responds to incidents and large-scale cybersecurity crises, by establishing clear responsibilities, proper planning and greater cooperation at EU level.

3.11. The Member States will be able to jointly monitor the implementation of EU rules and assist one another in the event of cross-border problems. They will be able to establish a more structured dialogue with the private sector, coordinate the disclosure of vulnerabilities found in software and hardware sold on the internal market and coordinate the assessment of security risks and threats linked to new technologies, as happened for 5G.

4. The proposal for a directive on the resilience of critical entities

4.1. In 2006, the EU set up the European programme for critical infrastructure protection (EPCIP) and in 2008 it adopted the Directive on European critical infrastructure (ECI), which applies to the energy and transport sectors. Both the EU Security Union Strategy for 2020-2025 (COM(2020) 605 final) adopted by the European Commission and the recently adopted counter-terrorism agenda underline the importance of guaranteeing the resilience of critical infrastructure against physical and digital risks. However, both the assessment of the implementation of the ECI Directive carried out in 2019 and the impact assessment of the proposal considered in this opinion have shown that existing European and national measures do not guarantee that operators will be able to cope with the current risks. For this reason, the Council and the Parliament have called on the Commission to review the current approach to protecting critical infrastructure.

4.2. The EU Security Union Strategy adopted by the Commission on 24 July 2020 recognised the growing interconnection and interdependence between physical and digital infrastructure, while highlighting the need for more coherence and consistency between the ECI and NIS directives. To this end, the CER proposal, which has the same objective scope of application as the NIS 2 with regard to essential entities, extends the original scope of application of Directive 2008/114/EC, applying solely to energy and transport, to the following sectors: banking, financial market infrastructure, health, drinking water, waste water, digital infrastructure, public administration, and space. It also sets out clear responsibilities and proper planning and provides for increased cooperation. In this regard, a reference framework should be created for all risks and Member States must be supported in their efforts to ensure that critical entities are able to prevent, resist and absorb the consequences of incidents, regardless of whether risks are the result of natural disasters, incidents, terrorism, internal threats or public health emergencies such as the current situation.

4.3. Every Member State will be required to adopt a national strategy to guarantee the resilience of critical entities, to carry out regular risk assessments, and, on the basis of these assessments, to identify critical entities. Critical entities must in turn carry out risk assessments, adopt appropriate technical and organisational measures to boost resilience and report incidents to national authorities. Entities that provide services to or in more than one third of Member States are subject to specific oversight, including specific advisory missions organised by the Commission.

4.4. The CER proposal provides for different forms of support to Member States and critical entities, including the preparation of an EU-level overview of risks and the development of best practices and methodologies, along with training activities and exercises to test the resilience of critical entities. The cross-border cooperation system also includes an ad hoc expert group, the Critical Entities Resilience Group, which will be a forum for strategic cooperation and the exchange of information between Member States.

(*) COM(2020) 605 final.
5. Proposed changes to the legislative proposal concerned

5.1. The EESC welcomes the Commission's efforts to make public and private entities more resilient to threats from cyber and physical attacks. This is particularly significant and relevant in the light of the rapid digital transformation brought about by the COVID-19 outbreak. It also shares the view expressed in the communication on Shaping Europe's Digital Future that Europe must reap the benefits of the digital era and should strengthen its industry — especially small and medium-sized enterprises — and innovation capacity in an inclusive manner, through a strategy based on four pillars: data protection, fundamental rights, security and cybersecurity, as essential prerequisites for a society that is based on the power of data.

5.2. However, in light of the findings of the impact assessment and the consultation prior to the NIS 2 proposal, and taking into account the repeatedly emphasised aim of avoiding the fragmentation of national rules (which was also called for in the communication of 4 October 2017 on the implementation of the NIS Directive (\(^*\))), it is not clear to the EESC why the Commission did not propose the adoption of a regulation instead of a directive. This option was not even considered.

5.3. The EESC notes that some of the provisions in the two proposals overlap as they are closely linked and complementary: one proposal focuses primarily on aspects of cybersecurity and the other on physical security. It should also be noted that the critical entities referred to in the CER cover the same sectors and are the same as the ‘essential’ entities referred to in NIS 2 (\(^\dagger\)). In addition, all critical entities covered by the CER are subject to the NIS 2 cybersecurity obligations.

Then the two proposals set out a number of bridge clauses to ensure continuity between them, including: provisions for reinforced cooperation between the authorities, sharing information on oversight activities, notifying the NIS 2 authorities about the identification of critical entities pursuant to the CER and regular meetings between their respective cooperation groups to take place at least once a year. The two proposals also share the same legal basis, Article 114 of the TFEU, which aims to complete the internal market by harmonising national rules, as interpreted, inter alia, by the EU Court of Justice in its judgement on Case C-58/08, Vodafone and others. The possibility of combining the two proposals to form a single text should be considered in the interests of simplification and streamlining.

5.4. The EESC welcomes the removal of the distinction between operators of essential services and digital services providers found in the original NIS Directive. However, with regard to its scope of application, the Committee points out that specific, clearer guidelines are needed to identify those bound by the directive. In addition to the references set out in Annex I and II, the NIS 2 Directive refers to several sets of criteria which differ from one another and involve sensitive quantitative and qualitative assessments that could be carried out differently at national level. This may again lead to the fragmentation that this legislative proposal aims to avoid. It is important to ensure that inconsistent approaches at national level do not result in barriers to competition or free movement of goods and services, which could jeopardise businesses and undermine trade.

5.5. According to the NIS 2 Directive, critical operators in sectors considered as ‘essential’ by the proposal considered in this opinion are also subject to more general resilience-enhancing obligations, with an emphasis on non-cyber risks, as per the CER Directive. However, the latter explicitly states that it does not apply to matters covered by the NIS 2 Directive. In fact, the CER Directive states that as cybersecurity is sufficiently addressed in the NIS 2 Directive, matters covered by it should be excluded from the scope of the CER, without prejudice to the special provisions for entities in the digital infrastructure sector. The CER Directive further notes that entities in the digital infrastructure sector are in essence based on network and information systems and fall within the scope of the NIS 2 Directive, which also addresses the physical security of such systems as part of their cybersecurity risk management and reporting obligations. At the same time, the CER does not rule out the possibility that specific provisions could be applied to them.

5.6. In light of this complex picture, the EESC considers it essential that the Commission clarify the exact scope of application of the two sets of rules, particularly in areas where competing provisions aim to regulate the same matters or subjects.

5.7. Ensuring the clarity of all regulatory provisions, and especially those included in extensive and complex texts such as the proposals considered in this opinion, should be a non-negotiable aim, at every level, along with reducing bureaucracy and fragmentation, simplifying procedures, security requirements and incident reporting obligations. In addition, it is

important to ensure that increasing the number of bodies assigned to specific tasks does not make it more difficult to clearly identify their competences, as this would undermine the objectives pursued. For this reason and for the benefit of members of the public and businesses, it may be worthwhile merging the two proposals to form one single text, thus avoiding a sometimes complicated interpretation and implementation process.

5.8. In several cases, the NIS 2 refers to provisions in other legal texts such as Directive (EU) 2018/1972 (8) establishing the European Electronic Communications Code, which is governed by the principle of speciality. Some of the provisions in this directive are explicitly repealed (Articles 40 and 41), while others will still apply in accordance with the above-mentioned principle, without any clarification being provided in this regard. The EESC would like to see any doubts dispelled regarding this point in order to avoid problems of interpretation. The EESC also endorses the Commission’s aim of harmonising the system of penalties for failure to comply in the area of risk management, with a view to improving information-sharing and cooperation at EU level.

5.9. The EESC recognises the key role, as highlighted in the proposal, played by the management bodies of ‘essential’ and ‘important’ entities in the cybersecurity strategy and risk management, as they have to approve risk management measures, oversee their implementation and be accountable for any non-compliance. In this connection, members of these bodies are required to take specific training courses on a regular basis in order to acquire sufficient knowledge and skills to apprehend and manage the various cyber risks and assess their impact. However, the EESC considers that the proposal should specify the content of such knowledge and skills, so as to provide guidance at European level on which training competencies are considered sufficient to meet the requirements set out in the proposal, in order to prevent the training course content and requirements differing between countries.

5.10. The EESC agrees that ENISA plays a key role in the overall European institutional and operational cybersecurity system. In this regard, it considers that, in addition to the report on the state of cybersecurity in the Union, this body should publish up-to-date information on cybersecurity incidents and sector-specific warnings online. This would be a useful way of providing information to enable stakeholders affected by NIS 2 to better protect their businesses.

5.11. The EESC agrees that access to accurate and timely information on vulnerabilities affecting ICT products and services can help to ensure better cybersecurity risk management. In this regard, publicly available sources of information on vulnerabilities are an important tool for competent national authorities, computer security incident response teams (CSIRTs), companies and users. The EESC therefore agrees with the proposal to entrust ENISA with the task of setting up a European Vulnerability Register. Essential and important entities and their suppliers would be able to report information to this register, so as to enable users to adopt the appropriate mitigation measures. The EESC considers, however, that this communication of vulnerabilities and the most serious incidents must be made obligatory instead of voluntary, thus ensuring that it is also a useful tool for contracting authorities involved in the various European-level procurement procedures, including those for 5G technologies and products. The register would then contain information that can be used for evaluating tenders, as it could be used to check both their quality and the reliability of European and non-European contractors in terms of the security of the products and services included in the call for tenders, in accordance with the Recommendation on the Cybersecurity of 5G networks of 26 March 2019. The register should also ensure that the information it contains is made available in a way that avoids any kind of discrimination.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Europe’s media in the Digital Decade: an action plan to support recovery and transformation’

(COM(2020) 784 final)

(2021/C 286/29)

Rapporteur: Elena-Alexandra CALISTRU

Referral European Commission, 24.2.2021

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1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the Commission’s action plan and the efforts made through various instruments to create a free, varied and dynamic environment in the media market, and is pleased that this market is recognised as being crucial to strengthen open, democratic societies and stimulate Europe’s cultural diversity.

1.2. The EESC welcomes the acknowledgement that culture and the creative ecosystem, to which the news media and audiovisual sectors belong, have been affected by the pandemic and so require immediate intervention. The industry’s economic recovery and competitiveness are prerequisites for a healthy, independent and pluralist media, which in turn is fundamental for our democracy. The EESC endorses the emphasis on the fact that media companies are both an economic sector and a public good that is crucial for providing people with accurate information and enabling democracy to function properly.

1.3. The combination of the underlying trends and the COVID-19 crisis could, without a strong policy and financial support response, undermine the resilience of Europe’s media sector and its democratic role. The EESC shares the Commission’s concern that this could weaken Europe’s cultural diversity and media pluralism and salutes the Commission’s commitment to measures that are to be implemented in close cooperation with the Member States, the European Parliament, the media industry and all stakeholders. Nonetheless, the EESC would point out that it is paramount that the Member States do everything they can to take those measures from potential to reality, working together to strengthen the media and democracy.

1.4. The EESC takes a positive view of the fact that the communication has a threefold objective: accelerating both the recovery and transformation of the media industry and increasing its resilience. Steps must be taken to tackle the structural challenges facing the audiovisual and news media industries, as well as towards fostering an enabling environment where the media and civil society are able to participate in an open debate, free from malign interference and disinformation.

1.5. The EESC would like the plan to be more closely tied to the social realities and specific features of the industry. In particular, the interventions should take into account the realities of the discrepancies in the media and audiovisual industry landscape between the individual Member States, and of the discrepancies within the Member States between the capacity and needs of local and national media. The financial tools should be transparent, accessible and inclusive towards all the players that ensure the diversity of the European media and audiovisual industry, including by ensuring more support to local media and media start-ups.

1.6. The EESC requests that the social partners and civil society be involved in the implementation of the actions that seek to empower citizens, recognising their role in promoting the values of democracy, strengthening media freedom and countering disinformation through media literacy. If the plan is to succeed, it must manage to involve all relevant stakeholders in an effort to recognise the importance of the media for Europe’s democratic values, as well as in equipping its
citizens with the skills to recognise and consume information and audiovisual culture that is advancing those very values. Regular reports like those on fighting disinformation campaigns can be used to assist media literacy efforts.

2. Summary of the Commission communication

2.1. The Commission communication focuses on the news media sector (including printed and online press, radio and audiovisual services) and the audiovisual cultural industry, particularly cinema, TV, radio and video streaming as well as video games and innovative formats, such as virtual reality experiences.

2.2. In this communication, the Commission presents a framework document/action plan setting out a series of initiatives designed to contribute to the recovery and transformation of Europe's news media and audiovisual sectors. These sectors, which have been badly affected by the COVID-19 crisis, are crucial for democracy, cultural diversity and Europe's digital autonomy.

2.3. At the same time, Europe’s news media and audiovisual sectors have been critical as they have kept people informed and entertained during the COVID-19 pandemic. The demand for fact-checked information and news has increased substantially, while films, series and video games have been the main source of culture during the months of lockdown.

2.4. The communication is built around three themes:

(a) Recover: what the Commission plans to do to help audiovisual and media companies to weather the current storm and provide liquidity and financial support;

(b) Transform: address structural issues by helping industry face the twin transitions of climate change and digitisation, in the context of fierce global competition;

(c) Enable and empower: setting the conditions allowing more innovation in the sector, whilst ensuring a true level playing field and empowering individuals to access content more easily and take informed decisions.

2.5. The action plan is part of the Commission’s broader efforts to design a series of initiatives to help shape Europe’s digital future and is one of the initiatives comprising the pillar of an open, democratic and sustainable society.

2.6. The communication also complements the European Democracy Action Plan and is based on the framework established by the recently revised Audiovisual Media Services Directive (AVMSD) and Copyright reform. It must also be read as part of the rules laid down by the joint Digital Services Act and Digital Markets Act.

3. General comments

3.1. The EESC welcomes the comprehensive approach taken to the measures needed both to ensure a better environment for journalists and to promote media literacy. It should therefore be stated more clearly just how the communication complements the European Democracy Action Plan, including with regard to the allocation of financial support.

3.2. The relevant documents should be interlinked carefully and thoroughly, including by flagging up more carefully the measures set out in the Commission proposals on the Digital Services Act and the Digital Markets Act, and the European Consumer Agenda, as the media roadmap emphasises the impact of the digital transformation including making European media more competitive (1).

3.3. The EESC welcomes the tangible structure and instruments, and considers that they can provide both an immediate response to the need for post-crisis recovery by facilitating and extending access to financing, and a longer term response due to the emphasis on transformation triggered by the stimulus of investment in the twin transitions of climate change and digitisation. However, we must provide an enabling environment so that media can try out new models of financing. Without funds allowing an approach based on trial and error, innovation in this field will struggle. There are currently no standard models which could be rolled out, only individual success stories of specific media companies which have managed to make themselves sustainable.

3.4. With regard to the news media sector, the EESC notes that the action plan covers measures to manage the challenges thrown up by a digital market where the lion's share of advertising revenue is channelled towards global digital platforms. The proposed financial mechanisms are more diverse than ever, and yet there is a risk of a one-size-fits-all approach which could lead to discrepancies between and, even more, within Member States (i.e. between the national and local levels). Account must be taken of the uneven capacity of local news media to access complex financial instruments.

3.5. The EESC points out that action must be taken to deal with the danger of fragmentation (2). The principal measures for the audiovisual sector are geared towards this challenge, which is due not just to pressure from online platforms but also to the fact that the sector focuses almost exclusively on the national audience. Bold measures are needed to enable European players to invest in content, talent, promotion, distribution, innovation and technology throughout the EU.

3.6. As an assembly representing civil society, the EESC has pointed out on many occasions (3) that Europe's digital future is based on a people-centred approach, but also that critical thought and media literacy are essential (4). The EESC emphasises once again that the media's digital transformation will not be possible unless the public is prepared for it, and so measures promoting media literacy and civic education are essential.

3.7. Furthermore, the EESC wishes to emphasise that inclusion and accessibility are vital factors to keep in mind in all aspects of the strategy: from provision for receiving funds, in the technical solutions for applying and for Media Data Space to the platforms for availability of audiovisual content and education, empowerment as well as the functioning of the European media market.

4. Specific comments

4.1. The actions supporting recovery include financing programmes with a direct impact on the media, yet only a few of these financing mechanisms are stable, predictable and accessible throughout the duration of the action plan. The measures proposed need to be adapted to guarantee essential financing for priorities, above and beyond the funds temporarily available or at the discretion of the Member States. For instance the Creative Europe programme, which will be accessible for the entire duration of the Multiannual Financial Framework, will for the first time include measures focused on media freedom and pluralism, journalism and media literacy. The other sources of financing proposed however are temporary (such as SURE) or the Member States can choose not to use them (Structural Funds).

4.2. Action 1 proposes easier access to EU support by means of an interactive tool that will provide guidance on how to apply for the relevant EU support during the 2021-2027 Multiannual Financial Framework and through national recovery and resilience plans. This is an excellent idea which will make it easier to find information and will optimise media financing processes. However, it needs to be accompanied by a mechanism enabling the Member States to send information in real time so that the portal has the necessary information when it is relevant.

4.3. Action 2 deals with the MEDIA INVEST initiative aimed at boosting investment in the audiovisual industry. This is a dedicated equity investment platform intended to foster European audiovisual productions and distribution strategies. The EESC believes that investment will need to increase substantially, and that this investment must go hand in hand with greater attention to innovation if the aim is also to make European audiovisual companies more competitive in an ever more aggressive global market. In addition, and in the context of the COVID-19 crisis, the EESC recommends the creation of a European insurance fund for audiovisual production.

4.4. Action 3 deals with NEWS, an initiative which aims to bundle actions and support for the news media sector. The wide range of tools is also significant. However, it is important to take into account that these support mechanisms should be geared to the particular features of the industry, providing opportunities for both media start-ups (regardless of their legal structure) and freelance journalists.

4.5. More support must be given to local media and media start-ups that do not have the capacity to apply for this type of financing, through tools that are easy to access by the small independent media that are struggling the most with financial resources. Channeling the financing via professional associations could help small media to access the support needed. In some Member States, the media market, particularly the local market, is weak and vulnerable and so investors might not see it as an opportunity. Solutions must therefore be found allowing local media companies to diversify their income flows and to strengthen their market position, without their becoming dependent on external investors who might dismiss the potential profitability of investing in these low-value markets.

4.6. Financial support mechanisms must be accompanied by measures set out in the European Democracy Action Plan to ensure that they are consistent in promoting the values of democracy, strengthen media freedom and counter disinformation. To the same ends, while welcoming the diversity and innovation of financial instruments, the EESC underlines the need to ensure the transparency of public and private investments, funds, foundations and any other media ownership structures, and to ensure that they do not contribute to a phenomenon of hyper-concentration and do not come with any specific political or ideological demands attached.

4.7. Action 4 introduces actions focusing on transforming the industry, unleashing innovation through a European media data space and encouraging new business models. As in other opinions (¹), the EESC agrees that we need to build a genuine European single market for data, a European data space based on European standards and values, including in the media industry. The measures must allow for the need to boost the industry’s capacity to switch to a media model based increasingly on data, as there are major disparities in this respect across the industry. However, the EESC expresses its concern about the need to ensure that the rights of users who provide data for this European market are guaranteed, while at the same time pointing out, in line with what has been stated by different European consumer organisations, the need for users to obtain fair compensation for the use of their data.

4.8. The other measures set out in this framework are consistent with the efforts to bring about the digital and economic transformation and should be seen in the broader context of actions in those areas. Action 5 seeks to foster a European Virtual and Augmented Reality industrial coalition, while Action 6 promotes the shift to a climate-neutral audiovisual sector through the structured exchange of best practice. The EESC draws attention to the need to invest in professional training (²) and strengthen the industry in order to ensure the adaptation of skills to these fundamental issues.

4.9. The measures to enable and empower emphasise the need to put Europeans at the centre of the Digital Decade. Action 7 seeks to achieve broader availability of audiovisual content across the EU by launching a dialogue with the audiovisual industry and civil society in order to agree on steps to improve access to and availability of audiovisual content across borders in the EU and eliminate the geographical restrictions in access to digital content through geoblocking. The EESC welcomes the opening of this dialogue, which will have to take into account the necessary protection of copyright and the financing constraints of the audiovisual industry.

4.10. The EESC welcomes Action 8 which aims to foster European media talents through training, mentoring and support for innovation. However, we would flag up the variety of structures of industry stakeholders (self-employed workers, non-profit) and the need to ensure that all of them can access the mechanisms.

4.11. Action 9 focuses on empowering individuals. Given the importance of media literacy for both individuals and democracy, this issue should be prioritised. In particular, instruments must be developed to combat the proliferation and dissemination of disinformation and misinformation, which have grown worryingly. It is also pivotal to ensure that the measures set out in the pertinent documents and plans (³) are consistent, particularly because these sectors are new and entail a vast amount of information, and the Member States need clear guidance and consistent procedures.

4.12. Action 10 opens up the discussion on ensuring the functioning of the European media market by strengthening the cooperation framework among European media regulators within the European Regulators Group for Audiovisual Media Services (ERGA). The EESC appreciates the importance accorded to involving decision-makers at Member State level, especially in the context of enforcing the AVMSD, and encourage a similar approach for all the actions listed in the plan so that they become a genuine roadmap for the industry.

Brussels, 27 April 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG
Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Chemicals Strategy for Sustainability — Towards a Toxic-Free Environment’

(COM(2020) 667 final)

(2021/C 286/30)

Rapporteur: Maria NIKOLOPOULOU
Co-rapporteur: John COMER

1. Conclusions and recommendations

1.1. The EESC supports the Commission’s objective of moving towards a toxic-free environment and ensuring that chemicals are produced in a way that maximises their positive contribution to society and reduces the environmental impact.

1.2. A definition of what uses of chemicals are ‘essential’ is needed, and a clearly outlined methodology for how to make chemicals ‘safe and sustainable by design’. In this context, we emphasise that ‘substances of concern’ must be identified, evaluated and classified in the most comprehensive, unambiguous and simplified manner so that industry can adapt.

1.3. The EESC compliments the Commission on its view that the EU should be a global frontrunner in the production and use of safe and sustainable chemicals and highlights the importance of assuring a level playing field in international trade deals for companies, and measures for a just transition for all EU citizens.

1.4. In order for the strategy to be successful, people’s and industry engagement is required, as well as innovative ways of thinking, coupled with transparency and involvement in the decision-making process.

1.5. The strategy aims to extend the generic approach to risk management to consumer products containing hazardous chemicals such as carcinogenic, mutagenic or endocrine disruptors. However, to make it easier for industry to adapt, the balance between generic and risk assessments needs to be ensured.

1.6. The EESC calls for proper and consistent labelling to be mandatory, with enforcement for the whole supply chain, including products containing nanomaterials.

1.7. The EESC welcomes the effort to strengthen the EU’s strategic autonomy, especially in terms of chemicals used for health applications, and wishes to see the same effort in other sectors and calls for a revision of EU Industrial Policy to be considered, with a view to relocating part of the key chemicals production in the EU countries.
1.8. The EESC stresses the importance of tackling the lack of availability of chemical data so as to boost innovation, consumers’ trust and conduct proper impact assessments. It is vital to have accessible and reliable databases for research results to review the industrial property rights and patents that limit access to data, and to strengthen the principle of ‘no data-no market’.

1.9. The EESC considers that addressing chemical mixtures is a relevant step forward in the risk assessment of chemicals. However, more research and development is crucial to cover the actual gaps of knowledge and put forward the assessment and management of chemical mixtures.

2. Commission’s proposal

2.1. This strategy is an opportunity to reconcile the societal value of chemicals with human health and the limits of our planet, responding to the legitimate aspirations of EU citizens for a high level of protection from hazardous chemicals, and to promote EU industry as a global frontrunner in the production and use of safe and sustainable chemicals.

2.2. To strive for a toxic-free environment, a new hierarchy in chemicals management is established, which includes the use of safe and sustainable chemicals, the minimisation or substitution of substances of concern with a chronic effect on human health and the environment, and phasing out the most harmful ones for non-essential societal use, in particular in consumer products.

Figure

The toxic-free hierarchy — a new hierarchy in chemicals management

2.3. The strategy focuses on five main goals

2.3.1. Innovate for safe and sustainable EU chemicals. Proposed measures include, among others, developing EU safe and sustainable-by-design criteria for chemicals; introducing legal requirements on the presence of substances of concern in products through the initiative on sustainable products and making amendments to EU legislation on industrial emissions to promote the use of safer chemicals by EU industry.

2.3.2. Strengthen the EU legal framework to address pressing environmental and health concerns. The actions proposed are geared towards the protection of consumers and workers to avoid the presence of the most harmful chemicals in all consumer products, e.g. food contact materials, toys, childcare articles, cosmetics, detergents, furniture and textiles. Specific attention will be devoted to chemicals that can cause cancers, gene mutations, affect the reproductive or the endocrine system or are persistent and bioaccumulative. This approach will eventually apply to chemicals affecting the immune, neurological or respiratory systems and chemicals toxic to a specific organ. Until the generic approach to risk management is in place, substances with all the above-listed hazards will be prioritised for restrictions for all uses and through grouping, instead of regulating them one by one.
2.3.3. Simplify and consolidate measures to improve the legal framework. The proposal includes the establishment of a ‘one substance, one assessment’ process to coordinate the hazard/risk assessment of chemicals across chemical legislation, to strengthen the governance of the European Chemicals Agency and increase the sustainability of its financing model. In addition, the strategy proposes targeted amendments to the REACH (Regulation for Registration, Evaluation, Authorisation and Restriction of Chemicals) and CLP (the Regulation on classification, labelling and packaging) to be carried out in line with the better regulation principles and subject to evaluations and impact assessments, as appropriate.

2.3.4. Build a comprehensive knowledge base on chemicals. An EU early warning and action system for chemicals will be developed to ensure that EU policies address emerging chemical risks as soon as they are identified by monitoring and research; and to create a framework of indicators to monitor the drivers and impacts of chemical pollution and measure the effectiveness of chemicals legislation.

2.3.5. Set the example for a global sound management of chemicals. These actions will aim to support the capacity-building of third countries in chemicals assessment and management and to ensure that hazardous chemicals banned in the EU are not produced for export.

3. General comments

3.1. Over the past 50 years, chemicals have become central to our way of life, making a positive contribution to our culture and to the progress of society as a whole, with its growing population. At the same time, chemicals – both synthetic and naturally occurring ones – can have hazardous properties posing a risk to human health and the environment.

Despite this, humanity is increasingly dependent on them. According to the UN, chemicals output will grow seven times faster than the global population between 1990 and 2030.

3.2. We should all agree to the laudable objective of a toxic-free environment and no matter how difficult it is to achieve it, there is no excuse for not trying to move forward. The EESC welcomes the Commission’s intention to establish a high-level roundtable with all stakeholders for this purpose.

3.3. Large quantities of hazardous chemicals continue to leak into the environment, from many sources, such as treated or untreated domestic and industrial wastewater discharge, landfill, incineration and manufacturing processes etc., and can spread through air, soil and water, where they do serious damage (1).

3.4. There are many legacy issues due to chemical contamination. For example, PBDEs (Polybrominated diphenyl ethers) and other flame retardants migrate easily from the products they are added to, such as polyurethane foam, and then contaminate air and dust. Although many harmful PBDEs have been banned, they remain in the environment due to their persistence and extensive use.

3.5. When replacing such hazardous chemicals, we need to be sure that the impact of the replacement is a significant improvement. For example, palm oil biodiesel, which contributes to deforestation, might be worse for the environment than using fossil fuels.

3.6. Moreover, regulators need to be aware of and avoid attempts at replacing one hazardous chemical with chemicals that have similar hazardous properties. For instance, PFAS should be dealt with as a group rather than on an individual basis. New research suggests that some alternatives to legacy PFASs may be no safer (2).

(1) Joyce Msuya, deputy director of the UN Environment programme.
(2) EU news alert issue 517, 22.11.2018.
3.7. The EESC is concerned that decontamination actions to restore human health and the environment may not be sufficient, especially for essential chemicals for which toxic-free alternatives are not available yet or require long-term development process, as well as those phased-out chemicals that are still a matter of great concern due to their persistence in the environment. As there are still great efforts to adopt decontamination strategies, the EESC is looking forward to seeing the upcoming ‘Zero pollution action plan’.

3.8. The EESC calls for proper and consistent labelling to be mandatory for the whole supply chain, with enforcement, for products containing nanomaterials (toys, biocides, clothes, pesticides, drugs, paints, childcare products, etc.).

3.9. The EESC also wonders if the timeline for the several actions to be held in parallel is realistic and feasible, considering industry’s need to adapt to the transition gradually without severe negative social and economic consequences. Moreover, the capacity building of authorities needs to be reinforced; this is essential for the successful implementation of the planned updated policies.

3.10. Some aspects are missing or not sufficiently explained in the strategy, such as the estimated energy balance of the suggested chemical transition, and the consequences for workers and big and small companies in Europe. The European Structural and Investment Funds should dedicate financial resources to ensure effective implementation of the strategy.

4. Specific comments

4.1. Innovating for safe and sustainable EU chemicals

4.1.1. It is agreed that the transition to safe and sustainable-by-design criteria for chemicals is a social and economic imperative, in order to facilitate the green and digital transition of EU industry. This will be an enormous challenge and the necessary research is potentially very costly and will offer some competitive advantages. However, some job losses and economic losses might ensue, as not all companies might be able to adapt and not all workers to be reskilled/upskilled. Therefore, financial and incentive measures are crucial to achieve a just transition, with special reference for workers to keep their jobs or have a viable alternative, support investments and innovative business models.

4.1.2. Measures to ensure complete adaptation for workers, such as the incentivisation and funding of re-skilling and specialisation training in order to prevent job losses, are not specified. It is also concerning how the geo-allocation of industry sectors will determine the impact of the strategy. Industries located in peripheral areas should be taken into consideration, as well as the high rate of SMEs participating in the sector.

4.1.3. The concept of ‘safe and sustainable-by-design’ that will be developed causes concerns among stakeholders. For this reason, its definition and the appropriate skills to boost their production should involve the criteria of all the relevant actors.

4.1.4. The process for registration, evaluation and authorisation for chemicals is complex and requires specialisation, which is sometimes challenging for SMEs and usually entails high compliance and administrative costs. To facilitate the fulfillment of registration and regulatory risk management processes in REACH and CLP, the process should be simplified or training for non-experts could be incentivised.

4.1.5. Novel and cleaner industrial processes and technologies will reduce the environmental footprint of chemicals production, improve market readiness and achieve the Sustainable Development Goals and the overarching European Green Deal. Assessment guidelines and sharing of best practices on the design and implementation of cleaner industrial processes and technologies would make such a transition possible. The best available technologies need to be considered.
4.1.6. The Commission aims to minimise the presence of substances of concern in recycled materials, by introducing requirements and information on chemical content and safe use as part of the Sustainable Product Policy Initiative. The use of recyclable materials should not allow the use of hazardous chemicals in higher concentrations to remain (3). ‘Substances of concern’ must be identified, evaluated and classified in the most comprehensive, unambiguous but also simplified manner so that industry is enabled to adapt.

4.1.7. These measures will increase the confidence of consumers and producers for recycled products. The lack of adequate information on the chemical content of products produced by recycled materials is an issue and data protection restrictions could pose problems in this area.

4.1.8. The strategy announces increased investment in innovative technologies. This is a great opportunity to foster research in the field of valorisation of industrial waste products, particularly from agri-food waste, the great potential of which has been hampered by insufficient investment.

However, legal requirements for products from agri-food waste valorisation are almost neglected in both the ‘Farm to Fork’ and sustainable chemicals strategies. For instance, the presence of pharmaceutical residues in treated animal manure for fertilisation, the re-use of treated waste-water for crop irrigation and the residues of pharmaceuticals and pesticides, herbicides and insecticides in optimised food waste are matters of particular concern, as these bioactive substances might spread throughout the environment, triggering adverse effects on ecosystems. They should, therefore, be identified, evaluated and regulated. Human populations might be affected not only via exposure but also through consumption, as these substances may bioaccumulate and bio-magnify along the food chain.

4.1.9. Substances considered of concern cause confusion among stakeholders. An explanation of what kind of requirements are to be introduced and the timeline for implementation would be helpful so as to understand the impact of this measure on current material cycles.

4.1.10. The estimated energy balance of the suggested chemicals transition is a matter of concern. Given that the main required transformations for green material cycles are heavily endothermic processes (e.g. separation, recycling, decontamination, chemical conversion), the energy demand is expected to increase. Besides, the carbon footprint from manufacturing chemicals needs to be reduced, as it is usually an energy-intensive process.

4.1.11. Hydrogen has great potential for this purpose, both as an energy source and as a chemical reduction agent in targetable processes (e.g. to replace carbon as a reductor). However, hydrogen fuel cells still rely on expensive and environmentally costly platinum. There is a need for fundamental chemical research to find alternatives to platinum.

4.1.12. The Commission envisages more resilience in the supply and sustainability of chemicals used in essential applications for EU society by making the EU less dependent and increasing strategic foresight for chemicals. Increasing the resilience of chemicals used in health applications will mark considerable progress for the EU market and industry of chemicals used in healthcare. We need to know how these measures would apply to other chemicals of essential use.

4.1.13. Products made with raw materials imported from non-EU countries, for instance, REE, acquired through ore mining activities that pose environmental and health hazards, have become critical to several modern technologies, ranging from defence systems, mobile phones and televisions to LED light bulbs and wind turbines. Thus, the question arises as to what strategies will be put in place to tackle the dependency on other essential substances, for which production processes rely on supply from non-EU countries.

(3) EESC opinion on the ‘Implementation of EU environmental legislation in the areas of air quality, water and waste’ (OJ C 110, 22.3.2019, p. 33).
4.1.14. The EESC also wonders how the ‘safe and sustainable-by-design’ approach will be applicable to non-EU suppliers, which have their own chemicals regulations. Since the limits of these criteria for the production of chemicals have not yet been established, it is not clear whether the principle and the assessment measures would apply to raw material sources, regardless of their origin. It remains unclear how the proposed measures will be interlinked and balanced with different existing policies in non-EU countries involved in EU chemicals value chains.

4.1.15. The EESC therefore suggests that the EU Industrial Strategy be reviewed and that consideration be given to incentivising the return of chemicals production to EU countries. This will not only boost the EU’s strategic autonomy but it will also create new quality jobs and facilitate the achievement of the chemicals strategy.

4.2. Stronger EU legal framework to address environmental and health concerns

4.2.1. The EESC welcomes the Commission’s aim to extend the generic approach to risk management. Nevertheless, given that some products will be restricted, it is necessary to ensure consistency between generic and specific risk assessments in all chemicals, so as to enable industry to gradually adapt.

4.2.2. The EESC also welcomes the use of grouping to address PFAS regulation and endorses that the extent to which grouping strategies are adopted might need to be scaled up in order to increase the efficiency and effectiveness of the legislation (*).

4.2.3. The strategy will propose new hazard classes and criteria in the CLP Regulation to fully address environmental toxicity, persistence, mobility and bioaccumulation. It is important that the evaluation of chemicals’ adverse effects on the environment and the allocation of different hazard classes to chemicals are performed on a comprehensive and transparent basis. The classification criteria should be defined in detail, so as to anticipate potential concerns about other products under development.

4.2.4. The introduction of endocrine disruptors, persistent, mobile and toxic and very persistent and very mobile substances as categories of (Substances of Very High Concern) SVHC requires relying on comprehensive and transparent assessment and evaluation. Moreover, greater coherence between the SVHC identified in REACH and other European legislation (e.g. the EU Water Framework Directive) is needed.

4.2.5. The strategy mainly focuses on EDCs and PFAS, and also addresses pesticides, biocides, pharmaceuticals, heavy metals, plasticisers and flame retardants as hazardous substances. However, other chemicals of concern, such as nanomaterials, are barely mentioned. Though they are included in the REACH, the revision of the definition is pending and their regulation remains insufficient (e.g.: the lack of regulation of releases of nanomaterials into the environment, no restriction on their placing on the market, transparency and the establishment of an EU register to ensure their traceability from manufacture to consumers).

4.2.6. Given the widely documented evidence of the risks associated with some families of substances, the EU should not only restrict but sometimes even ban the use of already identified EDCs such as bisphenol, and phthalates –this also applies to chemicals with no nutritional utility in food products, such as nanomaterials.

4.2.7. Measures to promote and facilitate the substitution of SVHC and other hazardous compounds could be implemented through a financial mechanism (bonus/malus).

(*): EC Study for the strategy for a non-toxic environment of the 7th Environment Action Programme.
4.2.8. It is a relevant step forward in the risk assessment of chemicals of concern that mixtures are given special attention and the EESC welcomes the fact that both intentional and unintentional mixtures will be addressed. However, the remaining knowledge gaps on the toxicity and exposure to mixtures and the large number of chemicals in use lead to proposals such as the systematic use of the Mixture Assessment Factor (MAF) for single chemicals, to address unintentional mixtures. The reliability of MAF in chemical risk assessment raises concern, as this is not a scenario-specific factor. The EESC, therefore, strongly subscribes to the priorities and recommendations on research and development pointed out in the report (SWD(2020) 250 (5)) so as to effectively assess and manage chemical mixtures.

4.3. Simplifying and consolidating the legal framework

4.3.1. The EESC embraces the ‘one substance, one assessment’ approach to be considered for the efficient safety assessment of chemicals.

4.3.2. This will simplify and speed up the approval process, which will benefit producers and will facilitate the research and development of alternative toxic-free substances. However, the different impacts of the same substance in different circumstances and also in mixtures should not be dismissed.

4.3.3. Some 30% of alerts regarding dangerous products on the market involve risks due to chemicals and only one third of the registration files of the chemical substances registered by industry under REACH are fully compliant with the information requirements.

4.3.4. The zero-tolerance approach to non-compliance and the proposed actions to step up the implementation and enforcement of chemicals legislation are welcome. It is strongly recommended, that the principle of ‘No data, no market’ is properly implemented, instead of having unregulated products and chemicals on the markets.

4.3.5. Moreover, data on chemical substances approved for the market should be updated at regular intervals by the same registrants, as REACH is insufficient on certain aspects. According to the Chemical Evaluation Report (6), 64% of the substances under evaluation (126 out of 196) lacked the information to demonstrate the safety of the chemicals marketed in Europe.

4.3.6. Almost 90% of the products considered dangerous are imported from outside the EU. Global chemicals production is projected to continue to increase. It is likely that the EU and OECD countries will concentrate on developing and manufacturing technologically advanced chemical products, such as speciality and life-science chemicals. Africa, the Middle East and Asia will likely produce high volumes of ‘commodity’-type chemicals. This will pose enormous problems for the EU in terms of border controls and economic competitiveness. Measures will be required to ensure a level playing field for EU companies in free trade agreements.

4.3.7. The EESC welcomes the measures to strengthen the EU’s border controls and cooperation with online direct sales platforms.

4.4. A comprehensive knowledge base on chemicals

4.4.1. As the EU lacks a comprehensive information base on all substances, proposals for actions to improve availability of chemical data are welcome as long as they are effective.

4.4.2. From the industry’s point of view, the questionable patents system makes it impossible to reveal all aspects of patented products on the market.

(5) Commission Progress report on the assessment and management of combined exposures to multiple chemicals (chemical mixtures) and associated risks.

4.4.3. From the scientific point of view, limited free-of-charge open science hampers the free exchange of knowledge and the combination of efforts and investment. Scientific data protection rules, industrial property rights not sufficiently well-founded are constraining the accessibility of all relevant chemical data, and hence innovation.

4.4.4. The conflicts of data accessibility should be addressed and solved by including measures to broaden the data available and to improve its quality. For instance, a mechanism could be created in which industries that import manufacturing nanomaterials, finance independent research on nanomaterials risk, where there is a lack of scientific knowledge.

4.4.5. The Commission aims to continue to foster research and (bio-)monitoring to understand and prevent chemicals-related risks and drive innovation in chemical risk assessment and regulatory science.

4.4.6. To facilitate innovation through research, worker participation and financial support should also be devoted to optimise best practices in the transfer of knowledge, both industrial and scientific, ensuring free and easy access to reliable databases. Furthermore, access to innovation should be made available to every actor concerned by the EU chemicals industry.

4.4.7. Measures to foster innovation in safety testing and chemical risk assessment reducing animal testing are appreciated, especially considering the advances in research and cutting-edge novel methods developed (e.g. in vitro assays) that will improve the quality, efficiency and speed of chemical hazard risk assessments.

4.4.8. It is essential to ensure more transparency in decision-making. Many important matters are discussed in closed meetings, which causes confusion among EU citizens about the actions taken by the EU to limit their exposure to hazardous chemicals. Also, the raw data on which evaluations and decisions are made (ECHA & EFSA) must be available. There is a need to ensure more transparency on the decisions and positions of Member States regarding chemical substances on the market.

4.5. Setting the example for a global sound management of chemicals

4.5.1. In view of its global impact, the EESC is pleased to see that among the actions to promote safety and sustainability standards outside the EU, the Commission is committed to ensuring that hazardous chemicals banned in the EU are not produced for export. However, it remains unclear how remaining pieces of legislation to be developed and harmonised will apply globally. The banning of products for export may affect industry in other countries for which the ambition of the chemicals strategy does not apply. It is not clear how the effects on non-EU industries will be handled, as former producers and exporters of a specific product.

4.6. The overuse of chemicals in healthcare

There should be much more research in developing policies on disease prevention with a special focus on the immune system. The objective must be a positive attitude towards a healthy lifestyle, enabling people to use fewer chemical treatments when appropriate. All chemical treatments should be directed to those for whom that they are essential avoiding overuse.

4.7. Chemicals in agriculture

4.7.1. The negative impacts of pesticides used in agriculture on the environment need to be reduced without causing a decline in the quality of food production or compromising food security within the EU.

4.7.2. The current European Research Alliance, which is tasked with finding and testing organic alternatives to synthetic chemicals in agriculture, needs to be adequately funded. Investment should be focused on biological organic pesticides. Financial support should be also increased to foster research and innovation on natural-based plant growth promoters and plant protectors. For instance, the inherent bioactivity of certain natural compounds metabolised by rhizobacteria may be used as plant protectors against external pathogens.

(*) Acronyms ECHA (European Chemicals Agency) & EFSA (European Food Safety Authority).
4.7.3. A much more targeted use of chemical fertilizers is desirable and this should result in lower chemical fertilizer usage. Further research is needed to develop alternatives so that adequate food production continues and that farmers receive adequate incomes.

4.7.4. Further environmental and health risk assessments are required to evaluate whether the use of biotechnology and genetic engineering could help develop alternatives to chemical fertilizers and pesticides.

4.7.5. If no other viable alternatives are presented, a significant reduction in the use of pesticides will either increase production costs and/or lead to lower yields. Therefore, the questions of the economic burden for producers and consumers and the food imports from non-EU countries need to be looked at.

4.7.6. The new EU Biodiversity Strategy for 2030 is highly ambitious, as it is projected to transform at least 30% of Europe's land into a network of actively managed and protected areas. It should prove a major contribution to biodiversity, to nature restoration and help underpin the sustainable Chemicals Strategy in the agricultural sector.

4.7.7. In this sense, special efforts should be taken to better protect biodiversity and especially pollinators from pesticides. For instance, the EFSA Guidance document on the risk assessment of plant protection products on bees has big loopholes. It must integrate data on chronic toxicity, effects of pesticides on larvae and data on acute toxicity for bees and other pollinators.

4.7.8. For the Chemicals Strategy to be successful, we must have significant support from the general public and a real culture change in our approach to chemicals usage, climate change and environmental pollution.

Brussels, 27 April 2021.

The President of the European Economic and Social Committee
Christa SCHWENG

Brussels, 27 April 2021.

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of the European Economic and Social Committee
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(1) OJ C 311, 18.9.2020, p. 76.